The Code of the City of Tempe, Arizona

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Prepared by the City of Tempe

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Office of the City Clerk
Tempe, Arizona

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of the

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Chapter 1

GENERAL PROVISIONS

Sec. 1-1. How code designated and cited.

The ordinances embraced in the following chapters and sections shall constitute and be designated "The Code of the City of Tempe, Arizona" and may be so cited. Such code may also be cited as "Tempe City Code".
(Code 1967, § 1-1)

Charter reference—Codification of ordinances, § 2.15.
State law reference—Adoption of codes by reference, A.R.S., 9-801—9-804.

Sec. 1-2. Definitions and rules of construction.

In the construction of this code and of all ordinances of the city, the following rules shall be observed, unless such construction would be inconsistent with the manifest intent of the city council or the context clearly requires otherwise:

City. The words "the city" or "this city" shall be construed as if followed by the words "of Tempe".

Code. The words "the Code" or "this Code" shall mean "The Code of the City of Tempe, Arizona".

Computation of time. Except as otherwise provided, the time in which an act is required to be done shall be computed by excluding the first day and including the last day, unless the last day is a holiday, and then it is also excluded. In cases in which notice of a decision by the city must be given to a petitioner and in which the petitioner must file a notice of appeal of such decision within a time certain of less than ten (10) days, such time shall be computed starting with the day after the day during which the notice of decision is received by the petitioner by personal service or registered or certified mail.

State law reference—Similar provisions, A.R.S. § 1-243.

Council or *city council.* Whenever the words "council" or "city council" are used, they shall be construed to mean the city council of the City of Tempe, Arizona.

County. The words "the county" or "this county" shall mean the County of Maricopa in the State of Arizona.

Day. A day is the period of time between any midnight and the midnight following.

Daytime is the period of time between sunrise and sunset.

State law reference—Similar provisions, A.R.S., § 1-215(6).

Department, board, commission, office, officer or *employee.* Whenever any department, board, commission, office, officer or employee is referred to, it shall mean a department, board, commission, office, officer or employee of the city, unless the context clearly indicates otherwise.

Gender. The masculine gender includes the feminine and neuter.

State law reference—Similar provisions, A.R.S., § 1-214.

In the city. The words "in the city" or "within the city" shall mean and include all territory over which the city now has, or shall hereafter acquire, jurisdiction for the exercise of its police powers or other regulatory powers.

State law references—Extraterritorial jurisdiction, A.R.S. §§ 9-240(B)(21), 9-276(A)(18), 9-402; application of municipal ordinance to municipally owned, leased, etc., property, A.R.S. § 9-401.

Joint authority. All words giving a joint authority to three (3) or more persons or officers shall be construed as giving such authority to a majority of such persons or officers.

State law reference—Similar provisions, A.R.S., § 1-216.

Month. The word "month" shall mean a calendar month.

State law reference—Similar provisions, A.R.S., § 1-215(19).

Nighttime is the period between sunset and sunrise.

State law reference—Similar provisions, A.R.S. § 1-215(21).

Number. The singular number includes the plural, and the plural the singular.

State law reference—Similar provisions, A.R.S., § 1-214.

Oath. "Oath" includes affirmation or declaration.

State law reference—Similar provisions, A.R.S., § 1-215(22).

Or, and. "Or" may read "and" and, "and" may be read "or," if the sense requires it.

Owner. The word "owner" applied to a building or land, shall include any part owner, joint owner, tenant in common, joint tenant or tenant by the entirety of the whole or a part of such building or land.

Person. "Person" includes any person, firm, association, organization, partnership, business trust, corporation or company.

State law reference—Similar provisions, A.R.S., § 1-215(24).

Personal property includes money, goods, chattels, dogs, things in action and evidences of debt.

State law reference—Similar provisions, A.R.S., § 1-215(25).

Preceding, following. The words "preceding" and "following" mean next before and next after, respectively.

Property. The word "property" shall include real and personal property.

State law reference—Similar provisions, A.R.S., § 1-215(27).

Real property shall include lands, tenements and hereditaments.

State law reference—Similar provisions, A.R.S., § 1-215(28).

Shall, may. "Shall" is mandatory and "may" is permissive.

Signature or *subscription by mark.* "Signature" or "subscription" includes a mark when the signer or subscriber cannot write, such signer's or subscriber's name being written near the mark by a witness who writes his own name near the signer's or subscriber's name.

State law reference—Similar provisions, A.R.S., § 1-215(31).

State. The words "the state" or this "state" shall be construed to mean the State of Arizona.

Technical and nontechnical words. All words and phrases shall be construed and understood according to the common and approved usage of the language, but technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in the law shall be construed and understood according to such peculiar and appropriate meaning.

State law reference—Similar provisions, A.R.S., § 1-213.

Tenses. The present tense includes the past and future tenses, and the future includes the present.

State law reference—Similar provisions, A.R.S., § 1-214.

Week. A "week" consists of seven (7) consecutive days.

Writing. "Writing" includes any form of recorded message capable of comprehension by ordinary visual means. Whenever any notice, report, statement or record is required or authorized by this code, it shall be made in writing in the English language unless it is expressly provided otherwise.

Year. The word "year" shall mean a calendar year, except where otherwise provided.
(Code 1967, § 1-2)

Sec. 1-3. Ordinances not affected by code.

Nothing in this code or the ordinance adopting this code shall affect any ordinance:

(1) Promising or guaranteeing the payment of money for the city or authorizing the issue of any bonds of the city or any evidence of the city's indebtedness or any contract or

obligation assumed by the city;

(2) Providing for the annual tax levy;

(3) Granting a franchise;

(4) Relating to the salaries of the city officers or employees;

(5) Annexing territory to the city;

(6) Naming, renaming, opening, accepting or vacating streets or alleys in the city;

(7) Relating to zoning;

(8) Relating to subdivision control;

(9) Adopted for purposes which have been consummated;

(10) Which is temporary, although general in effect; or

(11) Special, although permanent in effect, and all such ordinances are hereby recognized as continuing in full force and effect to the same extent as if set out at length in this code.

Sec. 1-4. Provisions considered as continuations of existing ordinances.

The provisions appearing in this code, so far as they are the same as those of ordinances existing at the time of the effective date of the code, shall be considered as continuations thereof and not as new enactments.
(Code 1967, § 1-3)

Sec. 1-5. Code does not affect prior offenses, rights, etc.

Nothing in this code or the ordinance adopting this code shall affect any offense or act committed or done, or any penalty or forfeiture incurred, or any contract or right established or accruing before the effective date of this code.

State law reference—Effect of adoption of state statutes on prior offenses and punishments, A.R.S. § 1-105.

Sec. 1-6. Catchlines of sections; history notes, etc.; references to code.

(a) The catchlines of the several sections of this code printed in boldface type are intended as mere catch words to indicate the contents of the section and shall not be deemed or taken to be titles of such section, nor as any part of the section, nor, unless expressly so provided, shall they be so deemed when any such section, including the catchline, is amended or reenacted.

(b) The history or source notes appearing in parentheses after sections in this code are not intended to have any legal effect but are merely intended to indicate the source of matter contained in the section. Cross references and state law references which appear after sections or subsections of this code or which otherwise appear in footnote form are provided for the

convenience of the user of this code and have no legal effect.

(c) All references to chapters, articles or sections are to the chapters, articles and sections of this code unless otherwise specified.
(Code 1967, § 1-4)

State law reference—Similar provisions, A.R.S. § 1-212.

Sec. 1-7. General penalty; civil penalties; fees and collection; continuing violations.

(a) Whenever in this code, or in any ordinance of the city or in any order, rule or regulation issued or promulgated pursuant thereto, any act is prohibited or is made or declared to be unlawful or an offense or a misdemeanor, or the doing of any act is required or the failure to do any act is declared to be unlawful or an offense or a misdemeanor, where no specific penalty is provided therefor, the violation of any such provision of this code or other ordinance of the city or such order, rule or regulation shall be punished by a fine not exceeding two thousand five hundred dollars ($2,500) plus applicable surcharges, or imprisonment for a term not exceeding six (6) months, or by both such fine and imprisonment.

(b) Any person violating any of the provisions of this code which are designated as subject to civil sanction or penalty shall be punished by imposition of a civil sanction not to exceed five hundred dollars ($500), unless another penalty is specified.

(c) If the court refers any delinquent fines, fees, sanctions, penalties or restitution for collection, any collection or attorney costs are recoverable from the defendant and may be added to any balance due from the defendant to the court.

(d) In the discretion of the sentencing judge or magistrate, persons convicted of any violation of this code, or any ordinance of the city or any order, rule or regulation promulgated pursuant thereto, may be sentenced to a term of probation not exceeding three (3) years subject to such terms and conditions, including but not limited to the imposition of a fine or incarceration, or both such fine and incarceration, as the judge or magistrate deems appropriate and in the best interests of justice.

(e) Every day a violation of this code or any ordinance of the city or such order, rule or regulation shall continue shall constitute a separate offense.
(Code 1967, § 1-7; Ord. No. 508.2, 4-12-84; Ord. No. 808.90-01, 2-8-90; Ord. No. 95.11, 4-13-95; Ord. No. 2002.35, 8-8-02)

Sec. 1-8. Commencement of civil action, citation, contents.

(a) Unless otherwise specified, all civil actions for violations of this code which are designated as subject to civil sanction or penalty shall be commenced by delivering a citation to the person responsible for the violation.

(b) The citation shall direct the defendant to appear in Tempe Municipal Court or pay the fine imposed within fourteen (14) days after issuance of the citation. The form shall contain a schedule of fines and penalties.

(c) The citation shall be served by delivering a copy to the defendant by any of the following means:

(1) By service upon the defendant;

(2) By first class mail, postage prepaid, addressed to the defendant at the last known address. Service by mail is deemed complete upon deposit in the U.S. mail;

(3) By posting the citation on the property where the violation has occurred; or

(4) By any of the methods described in rules 4, 4.1 or 4.2, Arizona Rules of Civil Procedure.

(d) The citation shall contain the date and location of the violation, reference to the Tempe City Code provision or ordinance violated, and notice that within fourteen (14) days from the date on which the citation was issued the fine for the violation must be paid to and received by the Tempe Municipal Court or a request for a hearing be made to and received by the Tempe Municipal Court.

(e) The citation shall state that if the defendant fails to appear within the time specified, and either pay the fine for the violation or request a hearing, judgment by default will be entered in the amount of the fine designated on the citation for the violation charged plus a penalty amount as may be established by this code for the defendant's failure to appear.
(Ord. No. 2002.35, 8-8-02)

Sec. 1-9. Appearance; payment by mail.

(a) The defendant shall, within fourteen (14) days of the issuance of the citation, appear in person or through his attorney in the Tempe Municipal Court, and shall either admit or deny the allegations contained in the citation, or defendant may proceed as provided in paragraph (b) below. If the defendant admits the allegations, the court shall immediately enter judgment against the defendant in the amount of the fine for the violation charged. If the defendant denies the allegations contained in the citation, the court shall set a date for a hearing of the matter.

(b) The defendant may admit the allegation in the citation and pay the fine indicated by mailing the citation together with a check or money order made payable to the Tempe Municipal Court. If admitting the allegation, the defendant may also pay the fine by credit card as prescribed by the court. If payment is not received by the court date provided on the citation, a default judgment will be entered.

(c) Any defendant who appears in the Tempe Municipal Court and denies the allegations as provided in subsection (a) above shall be deemed to have waived any objection to service of the citation, unless such objection is affirmatively raised by the defendant at the time of the first appearance in relation to the citation.
(Ord. No. 2002.35, 8-8-02)

Sec. 1-10. Default judgment; collection of judgments.

(a) In addition to any civil sanction imposed, the city court shall assess a default fee of not less than fifty dollars ($50), unless another amount is specified in the Code, for:

(1) Each default judgment entered upon a failure of the defendant to appear for any civil violation, or for any civil traffic violation, unless such default judgment is set aside under Rule 28 of the Rules of Procedure in Civil Traffic Violation Cases; or

(2) A failure to pay any civil sanction imposed by the court.

(b) A judge or hearing officer may waive all or part of the default fee if the payment of the fee would cause a financial hardship to the defendant.

(c) No judgment may be entered against a fictitiously identified defendant, unless the citation is amended to reflect the true identity of the defendant who received the citation.

(d) The court may enforce collection of delinquent fines, fees, reinspection fees and penalties as may be provided by law. Any judgment for civil sanction pursuant to this article may be collected as any other civil judgment.
(Ord. No. 2002.35, 8-8-02)

Sec. 1-11. Rules of procedure and appeal.

The Arizona Rules of Procedure in Civil Traffic Violation Cases shall be followed by the Tempe Municipal Court for civil citations issued pursuant to the Tempe City Code except as modified or where inconsistent with the provisions of the Tempe City Code or as modified or established for use by the Tempe Municipal Court or the Arizona Supreme Court.
(Ord. No. 2002.35, 8-8-02)

Sec. 1-12. Effect of repeal of ordinances.

The repeal of an ordinance shall not revive any ordinances in force before or at the time the ordinance repealed took effect. The repeal of an ordinance shall not affect any punishment or penalty incurred before the repeal took effect, nor any suit, prosecution or proceeding pending at the time of the repeal for any offense committed under the ordinance repealed.
(Code 1967, § 1-5; Ord. No. 2002.35, 8-8-02)

State law reference—Similar provisions, A.R.S. § 1-252.

Sec. 1-13. Severability of parts of code.

It is hereby declared to be the intention of the city council that the sections, paragraphs, sentences, clauses and phrases of this code are severable, and if any phrase, clause, sentence, paragraph or section of this code shall be declared unconstitutional or otherwise invalid by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Code.
(Code 1967, § 1-6; Ord. No. 2002.35, 8-8-02)

Sec. 1-14. Supplementation of code—generally.

(a) By contract or by city personnel, supplemental to this code shall be prepared and printed whenever authorized or directed by the council. A supplement to the code shall include all substantive permanent and general parts of ordinances adopted during the period covered by the supplement shall be so numbered that they will fit properly into the code and will, where necessary, replace pages which have become obsolete or partially obsolete, and the new pages shall be so prepared that when they have been inserted, the code will be current through the date of the adoption of the latest ordinance included in the supplement.

(b) In preparing a supplement to this code, all portions of the code which have been repealed shall be excluded from the code by the omission thereof from reprinted pages.

(c) When preparing a supplement to this code, all portions of this code, the codifier (meaning the person, agency or organization authorized to prepare the supplement) may make formal, nonsubstantive changes in ordinances and parts of ordinances included in the supplement, insofar as it is necessary to do so to embody them into a unified code. For example, the codifier may:

(1) Organize the ordinance material into appropriate subdivisions;

(2) Provide appropriate catchlines, headings and titles for sections and other subdivisions of the code printed in the supplement, and make changes in such catchlines, headings and titles;

(3) Assign appropriate numbers to sections and other subdivisions to be inserted in the code and, where necessary to accommodate new material, change existing section or other subdivision numbers;

(4) Change the words "this ordinance" or words of the same meaning to "this chapter", "this article", "this division", etc., as the case may be, or to "sections _____ to _____" inserting section numbers to indicate the sections of the code which embody the substantive sections of the ordinance incorporated into the code; and

(5) Make other nonsubstantive changes necessary to preserve the original meaning of ordinance sections inserted into the code, but in no case shall the codifier make any change in the meaning or effect of ordinance material included in the supplement or already embodied in the code.

(Ord. No. 2002.35, 8-8-02)

Sec. 1-15. Same—exclusion of special or temporary ordinances.

Ordinances hereafter adopted which are not of a general or permanent nature shall not be prepared for insertion in this code.
(Ord. No. 2002.35, 8-8-02)

Chapter 2

ADMINISTRATION[1]

[1]**Cross references**—Civil defense and emergency services, Ch. 9; Elections, Ch. 13; Police, Ch. 26.

ARTICLE I. IN GENERAL

Sec. 2-1. Compliance by city with applicable laws.

The city and its officers and employees shall comply with all applicable state and federal laws.

Sec. 2-2. City manager may execute contracts.

The city manager is hereby authorized to execute all contracts and other documents or instruments in the name of the city during the absence or disability of the mayor and vice mayor. (Ord. No. 92.32, 7-30-92)

Sec. 2-3. Receipt and review of criminal history information.

(a) That the city council may examine criminal history information including non-conviction information concerning any employee or candidate for appointment to an employee position for which it is charged with the duty of administering under the charter of the city.

(b) That the safety officer and risk management personnel may examine criminal history information including non-conviction information concerning any incident which will involve any potential or actual liability, criminal or civil, on the part of the city or any incident which may give rise to a claim on behalf of the city and may furnish said information to the appropriate insurance or legal personnel charged with the responsibility of disposing of and collecting claims involving the city.

(c) That the internal services director, city manager and city council, when acting as a licensing authority, may examine criminal history information including non-conviction information concerning any applicant for a license or permit required under this code or any other public law.

(d) That the internal services director or designee may examine criminal history information including non-conviction information concerning any employee or candidate for appointment to a city position.
(Ord. No. 636.10, 4-13-78; Ord. No. 2002.56, 1-16-03; Ord. No. 2010.02, 2-4-10; Ord. No. O2014.27, 6-26-14)

Secs. 2-4—2-15. Reserved.

ARTICLE II. OFFICERS AND EMPLOYEES

DIVISION 1. GENERALLY

Sec. 2-16. Superintendent of streets.

(a) There is hereby established the office of superintendent of streets with all powers and duties as may be permitted by law for such office.

(b) The superintendent of streets shall automatically be the person appointed to hold the office of public works director and any appointment to the office of public works director shall also carry with it the appointment to the office of superintendent of streets.
(Code 1967, § 2-1; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Cross reference—Streets and sidewalks, Ch. 29.

Sec. 2-17. Repealed.

(Ord. No. 2000.41, 9-21-00; Ord. No. 2001.17, 7-26-01; Ord. No. 2002.13, 3-28-02)

Sec. 2-18. Deputy city managers.

(a) Deputy city manager/chief operating officer. There is hereby established the office of deputy city manager/chief operating officer working directly under and for the city manager. The obligations and duties of the deputy city manager/chief operating officer include: works through and with department directors to establish and maintain an environment which encourages creativity, innovation and accountability at all levels throughout the city; assists city management to shape, define and realize the organizational aspirations, mission and culture; serves as a visible leadership presence to encourage, develop and support department directors in providing visionary, innovative and service driven leadership to city customers and staff; evaluates proposed actions for potential positive benefits and unforeseen consequences to the city and its citizens; participates in complex and sensitive negotiations and special projects for the city manager; facilitates and coordinates projects, activities and goals with other city departments and outside agencies; provides strong visionary and innovative management leadership in accordance with the city's mission and values; and provides highly responsible and complex administrative support to the city manager. The deputy city manager/chief operating officer will manage such divisions, departments and offices as the city manager directs from time to time.

(1) The following offices and departments shall report to the deputy city manager/chief operating officer, unless and until the city manager directs otherwise:

a. *Community development department*. The community development department shall encompass the following divisions: planning; building safety; right-of-way management; and neighborhood services;

b. *Community services department*. The community services department shall encompass the following divisions: recreation; and, arts, cultural

services and library services;

c. *Internal audit*. The internal audit office provides independent appraisal of city programs, policies and functions in order to help management perform more efficiently and effectively; examines financial reports, various records and procedures to determine compliance with applicable ordinances, regulations, policies and contractual provisions; evaluates the city's internal control structure and recommends improvements that will help to safeguard the city's assets; and performs the duties of the taxpayer problem resolution officer, as outlined in § 16-515 of this code;

d. *Human services department*. The human services department shall encompass the following divisions and offices: social services; housing; and, diversity and outreach; and

e. *Public works department.* The public works department shall encompass the following divisions: water utilities division; field operations; transit and transportation; and construction management.

(b) Deputy city manager/chief financial officer. There is hereby established the office of deputy city manager/chief financial officer working directly under and for the city manager. The obligations and duties of the deputy city manager/chief financial officer include: works through and with department directors to establish and maintain an environment which encourages creativity, innovation and accountability at all levels throughout the city; assists city management to shape, define and realize the organizational aspirations, mission and culture; serves as a visible leadership presence to encourage, develop and support department directors in providing visionary, innovative and service driven leadership to city customers and staff; evaluates proposed actions for potential positive benefits and unforeseen consequences to the city and its citizens; participates in complex and sensitive negotiations and special projects for the city manager; facilitates and coordinates projects, activities and goals with other city departments and outside agencies; provides strong visionary and innovative management leadership in accordance with the city's mission and values; and provides highly responsible and complex administrative support to the city manager. The deputy city manager/chief financial officer will manage such divisions, departments and offices as the city manager directs from time to time.

(1) The following offices and departments shall report to the deputy city manager/chief financial officer, unless and until the city manager directs otherwise:

a. *Internal services department*. The internal services department shall encompass the following divisions: human resources; information technology; and, central and financial services; and

b. *Municipal budget office*. The municipal budget office shall prepare and submit an annual proposed budget and capital program to the deputy city manager/chief financial officer; and shall assist the deputy city

manager/chief financial officer on preparation of a complete report on the finances of the city.

(Ord. No. 2000.41, 9-21-00; Ord. No. 2001.17, 7-26-01; Ord. No. 2002.13, 3-28-02; Ord. No. 2010.02, 2-4-10; Ord. No. 2013.41, 8-22-13; Ord. No. O2014.27, 6-26-14)

Sec. 2-19. City manager.

The city manager, pursuant and in addition to the duties and obligations set forth in the city charter, is hereby authorized to establish such working groups and divisions under his direct supervision as he may deem appropriate from time to time. The city manager directly supervises and oversees support staff, divisions and departments which are not otherwise assigned to a deputy city manager.

(Ord. No. 2000.41, 9-21-00; Ord. No. 2001.17, 7-26-01; Ord. No. 2008.06, 2-21-08; Ord. No. O2014.27, 6-26-14)

Secs. 2-20—2-25. Reserved.

DIVISION 2. CITY COURT JUDGES AND HEARING OFFICERS[2]

Sec. 2-26. Appointment and qualification of judges.

(a) All judges of the city court of the city must meet the minimum following qualifications:

(1) Possess a law degree from an accredited law school and be a member of the State Bar of Arizona in good standing for a minimum period of five (5) years; and

(2) Have sufficient experience and temperament to preside over the city court and continue to meet all qualifications as may be established by the Arizona Supreme Court or as required by law for such judges.

(b) The presiding judge of the city court and such other judges as deemed necessary shall be appointed by the city council. The length of term of office for such judges shall be a minimum of two (2) years as determined by the city council.

(Ord. No. 1145, § I, 2-12, 5-16-85, in part; Ord. No. 94.14, 6-30-94)

Editor's note - Ord. No. 94.22, 7-14-94, expressed council approval of the appointment of all judges of the City Court, regular and pro tempore, to serve as juvenile hearing officers by the presiding judge of the Maricopa County Juvenile Court.

[2]**Charter reference**—City magistrate, 2.08(b).

State law reference—City courts, A.R.S. § 22-401 et seq.

Sec. 2-27. Filling of vacancies.

In the event of the death, resignation, suspension or removal of a city court judge, such vacancy may be filled for the unexpired term of office. The city council may suspend or remove a judge:

(1) For any reason authorized by law;

(2) Whenever the judge is unable to perform the duties of the office; or

(3) For failure to meet the minimum qualifications of the position.

(Ord. No. 1145, § I, 2-13, 5-16-85, in part; Ord. No. 94.14, 6-30-94)

Sec. 2-28. Temporary judges.

Notwithstanding anything to the contrary in this division, the presiding judge of the city court may appoint judges to serve on a temporary or "pro tempore" basis. Such judges shall be compensated on a contractual or hourly basis, shall not be eligible for any benefits as a full-time employee and shall be appointed for a term as set forth by the presiding judge of the city court.
(Ord. No. 1145, § I, 2-14, 5-16-85, in part; Ord. No. 94.14, 6-30-94)

Sec. 2-29. Appointment and qualifications of court hearing officers.

(a) The presiding judge of the city court may appoint court hearing officers who shall have the power to hear and adjudicate civil offenses. Court hearing officers appointed by the presiding judge must meet the following qualifications:

(1) All qualifications as may be established, from time to time, by the Arizona Supreme Court or as may be required by statute for such officers; and

(2) Possess a law degree from an accredited law school or a bachelor's degree with at least three (3) years of experience in the area of traffic law or a related field.

(b) Court hearing officers shall be appointed for a term of two (2) years and may be removed during the term by the presiding judge for cause and after a hearing. Court hearing officers shall comply with all personnel rules and regulations of the city as applicable and shall be nonclassified exempt employees.

(c) The presiding judge of the city court may appoint one or more court hearing officers to serve on a temporary or "pro tempore" basis as may be required by the city court, to serve under the authority of the presiding judge. Such hearing officers shall be compensated on a contractual or hourly basis, shall not be eligible for any benefits as a full time employee and shall be appointed for a term as set forth by the presiding judge of the city court.

(d) The powers and duties of the court hearing officers shall be those as may be established by statute or the rules of the Arizona Supreme Court or the presiding judge of the city court relating to such hearing officers.
(Ord. No. 94.14, 6-30-94)

Sec. 2-30. Establishment of city court user charge and city court enhancement fund.

(a) A city court user charge shall be imposed by the city court on all offenses processed by the court which result in an order or agreement to pay any fine, sanction, penalty or assessment or participate in any court authorized diversion program. The user charge shall not be imposed on civil parking violations. The city court user charge shall be established by city council resolution (see Appendix A). The city court user charge shall be collected by the court for deposit into the city court enhancement fund.

(b) A city court enhancement fund is hereby established for the exclusive purpose of enhancing technology, operation and facilities of the city court. The fund shall be administered by the presiding judge. Monies in the fund shall supplement funds provided to the city court through the city budget process and shall be used for city court technology, operation and facilities. Interest earned on monies in this fund shall be credited to the court enhancement fund.
(Ord. No. 95.38, 11-9-95; Ord. No. O2014.35, 8-14-14)

Sec. 2-31. Judicial advisory board—establishment; membership; powers and duties; operating procedures.

(a) There is hereby created a judicial advisory board, which shall have the purpose of recommending to the city council the best qualified persons to become city magistrate, and to evaluate the performance of and advise regarding the retention of current appointed magistrates. The board shall be composed of six (6) persons appointed by the mayor with the approval of the city council, as follows:

(1) The presiding judge of the Tempe Municipal Court, who shall serve as a non-voting ex-officio member except for the reappointment of the presiding judge;

(2) The presiding judge of the Maricopa County Superior Court, or designee who shall also be a judge of the Maricopa County Superior Court;

(3) Two (2) active members in good standing of the State Bar of Arizona, who shall reside in the Tempe who shall be appointed by the mayor from among three (3) nominees recommended by the State Bar's Board of Governors. In no event shall either member hold or have held any contract for professional services with Tempe in the last five (5) years; and

(4) Two (2) public members who are residents of Tempe. No public members shall have been a party to any matters pending before any division of the Tempe Municipal Court for the five (5) years preceding their appointment.

(b) The initial officers of the board shall be selected by the mayor with the approval of the city council. Thereafter, the officers of the board shall be selected by the members at the first meeting following the 31st day of December of each year and shall serve from January 1 until the 31st day of December of the next succeeding year. No officer may serve in the same capacity for more than three (3) consecutive one-year terms. None of the members of the board shall be an employee of the City of Tempe. Members shall serve a term of three (3) years and shall be eligible for reappointment for one additional three (3) year term. The members shall serve without salary or compensation.

(c) The Board shall have the following powers and duties:

(1) To seek out and encourage qualified individuals to apply for the office of city judge or presiding judge;

(2) To conduct investigations into the background and qualifications of candidates for a new appointment to the office of city judge or presiding judge, including but not limited to the use of questionnaires, personal interviews, and contacting such individuals and institutions as it deems reasonable to obtain as much background information on the candidate as possible;

(3) To get as much input as possible from litigants, lawyers, witnesses, victims, jurors and staff of the city court in any form practicable, including but not limited to surveys, and to hold public hearings designed to permit interested parties and groups to submit verbal or written comments on reappointments. Any mechanism chosen by the board to receive public input concerning appointments or reappointment must be designed to allow for confidential submissions to the board if so requested; and

(4) To submit its recommendations for candidates for appointment or reappointment to the office of city judge or presiding judge, without regard for race, religion, political affiliation, gender or sexual orientation, to the mayor and city council.

(d) The meetings of the board shall be held as needed for the purpose of reviewing applications for appointment or to conduct a reappointment review. A call for a meeting shall issue promptly upon learning of the existence or anticipated existence of a vacancy in the office of city judge or presiding judge or prior to the end of an existing term of a city judge or presiding judge eligible for reappointment.
(Ord. No. 2002.44, 10-24-02)

Sec. 2-32. Establishment of prosecution assessment.

(a) The city court shall assess each person prosecuted by the State in which an adjudication of guilt is entered a prosecution assessment as established by city council resolution (see Appendix A) for each case based upon a criminal or petty offense arising out of a violation of Arizona Revised Statutes, the Tempe City Code or the City of Tempe Zoning and

Development Code.

(b) Upon a finding of indigency or in the interests of justice, the city court may waive this assessment if it also waives all other fees or assessments that it has discretion to waive.

(c) The prosecution assessment shall be collected by the city court for deposit into the city general fund.
(Ord. No. 2006.45, 6-1-06; Ord. No. 2008.47, 9-18-08)

Sec. 2-33. Establishment of warrant fees.

(a) When a judge of the city court issues a warrant for failure to comply with a term or condition of sentence on a criminal charge, an administrative fee may be imposed upon the person for whom the arrest warrant is issued and this fee shall be added to the amount set forth in the arrest warrant.

(b) The warrant fee may be waived or suspended when such waiver would be in the interest of justice. No person who is found to be indigent by the city court shall be required to pay the warrant fee.

(c) The warrant fee provided for in this section is hereby declared to be a cost recovery measure, administrative in nature, separate from and in addition to any sentence or conditions imposed by the city court. The city court shall set forth the requirement and amount of such warrant fee as a separate item in all orders and judgments.
(Ord. No. 2006.46, 6-1-06)

Sec. 2-34. Appointment and qualifications of commissioners.

(a) The presiding judge of the city court may appoint court commissioners who shall have the power to hear and adjudicate civil offenses as well as criminal offenses on an as needed basis. Court commissioners appointed by the presiding judge must meet the following qualifications:

(1) Possess a law degree from an accredited law school and be a member of the State Bar of Arizona in good standing for a minimum period of five (5) years;

(2) Have sufficient experience and temperament to preside over the city court and continue to meet all qualifications as may be established by the Arizona Supreme Court or as required by law for such judges; and

(3) All qualifications as may be established, from time to time, by the Arizona Supreme Court as may be required by statute for hearing officers.

(b) Court commissioners shall be appointed for a term of two (2) years and may be removed during the term by the presiding judge for cause and after a hearing. Court

commissioners shall comply with all personnel rules and regulations of the city as applicable and shall be nonclassified exempt employees.

(c) The powers and duties of the court commissioners shall be those as may be established by statute or the rules of the Arizona Supreme Court or the presiding judge of the city court relating to such commissioners.
(Ord. No. 2007.13, 3-1-07)

Secs. 2-35—2-130. Reserved.

ARTICLE III. DEPARTMENTS[3]

Sec. 2-131. Generally.

(a) Pursuant to § 4.01 of the city charter, there is hereby established the following departments:

(1) Community development department;

(2) Community services department;

(3) Fire medical rescue department;

(4) Human services department;

(5) Internal services department;

(6) Police department;

(7) Public works department.

(b) All of the above departments shall be administered by an officer appointed by and subject to the direction and supervision of the city manager as provided in § 4.01(b) of the city charter.

(c) The departments may establish, with the approval of the city manager, such divisions and work groups as are deemed by the city manager to be in the best interest of the city.
(Ord. No. 2000.41, 9-21-00; Ord. No. 2000.52, 12-14-00; Ord. No. 2001.17, 7-26-01; Ord. No. 2002.13, 3-28-02; Ord. No. 2003.25, 9-11-03; Ord. No. 2005.18, 4-7-05; Ord. No. 2006.25, 4-6-06; Ord. No. 2010.02, 2-4-10; Ord. No. O2014.14, 3-20-14; Ord. No. O2014.27, 6-26-14)

Sec. 2-132. Community development department.

(a) The community development department is responsible for city redevelopment and revitalization, business recruitment and retention, and Tempe Town Lake at Rio Salado. The department's responsibilities include planning and directing redevelopment activities within the city, neighborhood enhancement, building safety, right-of-way management, neighborhood services, and special projects; developing strategies and implementing efforts to retain, increase and diversify the economic base of the city; and managing the operations, maintenance, administration, marketing and development of the Tempe Town Lake on the Rio Salado.

[3]**Editor's note**—Ord. No. 2000.41 repealed prior §§ 2-131 through 2-133. Prior ordinances were Code 1967 §§ 2-9—2-11, Ord. No. 636.9, Ord. No. 88.54, Ord. No. 95.13, Ord. No. 95.22 and Ord. No. 96.40.

(b) The community development department plans and directs development within the city, including development plan review, permitting and inspections, community planning and zoning, and customer service.

(c) The community development department shall be charged with the responsibility of fairly issuing building permits and fairly applying building codes, zoning ordinances and other development regulatory documents, which are approved by the city council, as well as responsibility for ensuring compliance with other codes and ordinances as designated by the city council or the city manager.

(Ord. No. 2005.18, 4-7-05; Ord. No. 2010.02, 2-4-10; Ord. No. O2014.27, 6-26-14)

Cross reference—Planning & development, Ch. 25.

Sec. 2-133. Repealed.

(Ord. No. 2002.13, 3-28-02; Ord. No. 2005.18, 4-7-05; Ord. No. 2010.02, 2-4-10)

Sec. 2-134. Community services department.

(a) The community services department plans, develops and provides a variety of services, programs and facilities for the community including cultural services, parks and recreation, arts, and the Tempe public library.

(b) The community services department shall be charged with the responsibility to carry out the following functions and services:

(1) To oversee the facilities, programs and services as assigned by the city manager and staffing of such boards, commissions or committees as may be established by the city council and assigned to be supported by the department;

(2) To establish and recommend to the city council and the city manager rules and procedures for the successful conduct of business relative to the facilities programs and services assigned;

(3) To make recommendations to the city council that will set by resolution the use of facility permit fee(s) and usage charges for nonprofit and profit groups to utilize on a temporary basis those portions of the facilities under the supervision of the community services director as assigned; and

(4) To make recommendations to the city council regarding fee(s) and charges for individuals and groups to participate in programs and utilize services under the supervision of the department as assigned.

(Ord. No. 2000.41, 9-21-00; Ord. No. 2001.17, 7-26-01; Ord. No. 2002.13, 3-28-01; Ord. No. 2005.18, 4-7-05; Ord. No. 2006.25, 4-6-06; Ord. No. 2010.02, 2-4-10; Ord. No. O2014.27, 6-26-14)

Sec. 2-135. Repealed.

(Ord. No. 2000.41, 9-21-00; Ord. No. 2002.13, 3-28-02; Ord. No. 2005.18, 4-7-05; Ord. No. 2010.02, 2-4-10)

Sec. 2-136. Repealed.
(Ord. No. 2003.25, 9-11-03; Ord. No. 2005.18, 4-7-05; Ord. No. 2010.02, 2-4-10)

Sec. 2-137. Repealed.
(Ord. No. 2001.17, 7-26-01; Ord. No. 2002.13, 3-28-02; Ord. No. 2010.02, 2-4-10; Ord. No. O2014.27, 6-26-14)

Sec. 2-138. Fire medical rescue department.

(a) The fire medical rescue department provides fire suppression, hazardous material mitigation, fire and life safety code compliance, fire prevention, public education, emergency medical services, technical rescue, community health, organization-wide disaster prevention activities and administrative support services to the city.

(b) The fire medical rescue department is also involved in the inspection and enforcement of all state and local fire codes.
(Ord. No. 2000.41, 9-21-00; Ord. No. 2001.17, 7-26-01; Ord. No. 2002.13, 3-28-02; Ord. No. O2014.14, 3-20-14)

Cross reference—Fire prevention & protection, Ch. 14.

Sec. 2-138.1. Human services department.

(a) The human services department is responsible for providing a variety of services, programs and facilities for the community including social services, housing, diversity and outreach, and serving as a liaison to the city's external partners.

(b) The human services department is responsible for: facilitating a fair and equitable work environment for city employees; coordinating the city's response to the diversity audit; functioning as an ombudsman for city employees; providing administrative support to the human relations commission; coordinating community special events; participating in investigation of administrative guidelines and human resource policies; participating in investigations and resolutions of internal and external harassment and discrimination complaints; serving as a resource for employees for issues relating to diversity and organizational effectiveness; and working with city departments to develop and improve diversity programs and efforts.
(Ord. No. O2014.27, 6-26-14)

Sec. 2-139. Internal Services department.

(a) The internal services department consists of the following divisions:

(1) *Central/financial services division*. The central/financial services division includes procurement; accounting; customer service including meter reading and water billing; risk management; and sales tax licensing functions of the city.

This division is responsible for administering Tempe City Code, Chapter 26A, Procurement;

(2) *Human resources division*. Section 4.02(b) of the city charter requires that a personnel officer be appointed by the manager to administer the personnel system. The deputy city manager/chief financial officer or designee is established as the personnel officer and may delegate any of the powers, duties and responsibilities therefore to any other employee of the city. All references to human resources manager within the personnel rules and this code refer to the internal services director or designee or the individual with day-to-day responsibility for city-wide human resources management.

a. The human resources division of the internal services department shall be charged with the responsibility to carry out the following functions and services:

i. To administer and coordinate employee relations such as grievances, merit hearings and diversity; to administer the city's personnel rules and regulations, recruitment and selection program, classifications and compensation plans and performance evaluation programs; to administer employee fringe benefit programs; to administer and coordinate training and education efforts for city employees; and any such other related duties; and

ii. To provide general administrative support such as maintenance of personnel records and transactions.

b. The internal services director or designee pursuant to A.R.S. § 41-1750 and Public Law (PL) 92-544 shall have access to background check and state, federal or both criminal history information non-conviction concerning:

i. Any, applicant, employee or candidate for appointment to a city position shall submit a full set of fingerprints to the internal services department. The department of public safety is authorized to exchange this fingerprint data with the federal bureau of investigation. Fingerprints must be submitted on fingerprint cards provided by the city;

ii. All prospective volunteers who will either be (i) in direct contact with minors or incapacitated adults while not under direct supervision of a regular city public safety employee or (ii) a prospective public safety volunteer, will require such prospective volunteer to be fingerprinted and to provide such fingerprints and such other information as may be needed by the Arizona Department of Public Safety to provide criminal history record information to the

city to evaluate the background of the prospective volunteer and to exchange fingerprint identification with the federal bureau of investigation for the purpose of obtaining criminal history record information on such individuals; and

iii. The internal services director or designee will keep all information obtained from the Arizona Department of Public Safety or the Federal Bureau of Investigation confidential and make such information available to other city personnel only as may be necessary to reach a determination as to the acceptability of the individual or as may be otherwise required by law. Specifically the information may be shared only as necessary with the mayor and city council of the city, the city manager or his designee and the city attorney's office.

(3) *Information technology division*. The information technology division of the internal services department shall be charged with the responsibility to carry out the following functions and services:

a. Provide shared resources, computer and voice systems, software solutions, customer support and information processing services to city departments and divisions;

b. Plan, develop and administer high-speed information systems, applications and networks for the purposes of information sharing, business collaboration, citizen interaction and self-service; and

c. Provide electronic public access to city information and services using state-of-the-art internet technology.

(Ord. No. 2001.17, 7-26-01; Ord. No. 2002.13, 3-28-02; Ord. No. 2002.56, 1-16-03; Ord. No. 2010.02, 2-4-10; Ord. No. 2013.14, 2-21-13; Ord. No. O2014.27, 6-26-14)

Sec. 2-140. Repealed.
(Ord. No. 2001.17, 7-26-01; Ord. No. 2002.13, 3-28-02; Ord. No. 2010.02, 2-4-10)

Sec. 2-141. Repealed.
(Ord. No. 2003.25, 9-11-03; Ord. No. 2010.02, 2-4-10)

Sec. 2-142. Repealed.
(Ord. No. 2006.25, 4-6-06; Ord. No. 2010.02, 2-4-10)

Sec. 2-143. Police department.

(a) The police department plans, develops, provides law enforcement services for the city, including patrol, crime prevention, communications, investigations, traffic, special enforcement, municipal jail, crime analysis and records.

(b) The police department enforces the laws of the State of Arizona and ordinances and codes of the city.
(Ord. No. 2000.41, 9-21-00; Ord. No. 2001.17, 7-26-01; Ord. No. 2002.13, 3-28-02; Ord. No. 2006.25, 4-6-06)

Cross reference—Police, Ch. 26.

Sec. 2-144. Public works department.

(a) The public works department plans, develops and administers construction management, building and custodial maintenance, refuse collection and disposal, recycling, street maintenance, traffic operations and maintenance, traffic studies and design, transit, equipment management, transit activities, parks and golf course maintenance activities for the city, and field operations.

(b) The public works department is responsible for the city's water resources, water quality and water conservation, operates water treatment facilities, provides water delivery to all city water users, operates the city's sanitary sewer system, provides environmental services for the city, and administers the city's industrial pretreatment program, its storm water program and its backflow prevention program.
(Ord. No. 2000.41, 9-21-00; Ord. No. 2000.52, 12-14-00; Ord. No. 2001.17, 7-26-01; Ord. No. 2002.13, 3-28-02 Ord. No. 2006.25, 4-6-06; Ord. No. 2010.02, 2-4-10; Ord. No. O2014.27, 6-26-14)

Sec. 2-145. Repealed.
(Ord. No. 2000.52, 12-14-00; Ord. No. 2001.17, 7-26-01; Ord. No. 2002.13, 3-28-02; Ord. No. 2006.25, 4-6-06; Ord. No. 2010.02, 2-4-10)

ARTICLE IV. FINANCIAL AFFAIRS

DIVISION 1. PROCUREMENT[4]

Sec. 2-146. Repealed.
(Ord. No. 91.18, 7-25-91; Ord. No. 97.55, 12-11-97)

Sec. 2-147. Repealed.
(Code 1967, § 13-1—13-3; Ord. No. 90.28, 7-12-90; Code 1986, § 2-146; Ord. No. 91.18, 7-25-91; Ord. No. 97.55, 12-11-97)

Sec. 2-148. Repealed.
(Ord. No. 89.20, 4-27-89; Ord. No. 97.55, 12-11-97)

Sec. 2-149. Repealed.
(Ord. No. 89.20, 4-27-89; Ord. No. 97.55, 12-11-97)

Sec. 2-150. Repealed.
(Ord. No. 89.20, 4-27-80; Ord. No. 91.18, 7-25-91; Ord. No. 97.55, 12-11-97)

Sec. 2-151. Repealed.
(Ord. No. 89.20, 4-27-89; Ord. No. 97.55, 12-11-97)

Sec. 2-152. Repealed.
(Ord. No. 89.20, 4-27-89; Ord. No. 97.55, 12-11-97)

Sec. 2-153. Repealed.
(Ord. No. 89.20, 4-27-89; Ord. No. 97.55, 12-11-97)

Sec. 2-154. Repealed.
(Ord. No. 89.20, 4-27-89; Ord. No. 97.55, 12-11-97)

Sec. 2-155. Repealed.
(Ord. No. 89.20, 4-27-89; Ord. No. 97.55, 12-11-97)

Sec. 2-156. Repealed.
(Ord. No. 89.20, 4-27-90; Ord. No. 97.55, 12-11-97)

Sec. 2-157. Repealed.
(Ord. No. 91.18, 7-25-91; Ord. No. 97.55, 12-11-97)

Sec. 2-158. Repealed.
(Ord. No. 91.18, 7-25-91; Ord. No. 97.55, 12-11-97)

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[4]**Editor's note**—Ord. No. 97.55 repealed §§ 2-146 through 2-160 and enacted new chapter 26A, Procurement and materials management.

Sec. 2-159. Repealed.
(Ord. No. 91.18, 7-25-91; Ord. No. 97.55, 12-11-97

Sec. 2-160. Repealed.
(Ord. No. 91.18, 7-25-91; Ord. No. 97.55, 12-11-97)

DIVISION 2. CLAIMS AND DEMANDS AGAINST CITY[5]

Sec. 2-161. Repealed.
(Code 1967, § 13-11; Ord. No. 96.13, 6-6-96)

Sec. 2-162. Repealed.
(Ord. No. 1101, § I, 8-16-84; Ord. No. 96.13, 6-6-96; Ord. No. 2012.47, 10-18-12)

Sec. 2-163. Repealed.
(Code 1967, §§ 13-13, 13-14; Ord. No. 1101, § II, 8-16-84; Ord. No. 96.13, 6-6-96; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10; Ord. No. 2012.47, 10-18-12)

Sec. 2-164. Repealed.
(Code 1967, § 13-15; Ord. No. 96.13, 6-6-96; Ord. No. 2012.47, 10-18-12)

Sec. 2-165. Repealed.
(Ord. No. 1101, § III, 8-16-84; Ord. No. 96.13, 6-6-96)

Sec. 2-166. Repealed.
(Code 1967, § 13-17; Ord. No. 2012.47, 10-18-12)

Secs. 2-167—2-179. Reserved.

DIVISION 3. INVESTMENTS

Sec. 2-180. Investment of temporarily idle funds.

(a) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

(1) *Temporarily idle funds* means public money which is not immediately required to meet normal operating requirements of the city.

(2) *Permissible investments:*

[5] **Editor's note**—Ord. No. 2012.47 repealed §§ 2-162 through 2-164 and § 2-166 and moved them to a new Article VII – Risk Management, Division 2 – Claims and Demands Against City.

State law reference—Actions against a public utilities or public employees, A.R.S. § 12-820 et seq.

a. Obligations of the United States Government, its agencies and instrumentalities;

b. Fully insured or collateralized certificates of deposit and other evidences of deposit at banks and savings and loan associations;

c. Bankers' acceptances issued by the ten (10) largest domestic banks and the twenty (20) largest international banks, provided collateral meets the standards set by the finance and technology director;

d. A-I/P-I rated commercial paper secured by an irrevocable line of credit or collateralized by U.S. government securities;

e. Repurchase agreements whose underlying collateral consist of the foregoing;

f. Money market funds whose portfolios consist of the foregoing;

g. The State of Arizona's Local Government Investment Pool.

(b) *Prudent person rule.* Investments shall be made with judgment and care, under circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the probably income to be derived.

(c) *Authorization*. The finance and technology director shall have the authority to purchase and invest temporarily idle public funds in accordance with written policies. Such investment policies shall address liquidity, diversification, safety of principal, yield, maturity and quality, and the capability of investment management, with primary emphasis on safety and liquidity.

(Code 1967, §§ 13-1—13-3; Ord. No. 90.28, 7-12-90; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

ARTICLE V. BOARDS, COMMISSIONS, ETC.[6]

DIVISION 1. GENERALLY

Sec. 2-181. Powers and duties.

(a) All boards and commissions established by the city shall have the following powers and duties unless otherwise specified:

(1) To act in an advisory capacity to the city council for the purpose of making recommendations consistent with its duties;

(2) To establish such rules and regulations as it deems necessary for its government and for the faithful performance of its duties; to set a time for regular meetings which shall be held at least once a month if there is business to transact; to establish the manner in which special meetings may be held and the notice to be given thereof; and to provide that a majority of the total number of members shall constitute a quorum. The affirmative vote of a majority of the members participating in the meeting shall be required for passage of any matter before the board;

(3) To organize by electing one of its members as chairman of the board and one as vice-chairman. The city staff representative assigned to the board or commission shall act as secretary but shall not be entitled to take part in any voting;

(4) To require attendance of the members at regular meetings and provide that absence from three (3) consecutive regular meetings or six (6) meetings within any twelve (12) month time period without consent from the chairman or vice-chairman if the chairman is unavailable, shall be deemed to constitute a resignation and such position shall thereupon be deemed vacant;

(5) To consult, through the chairman of the board, or the vice-chairman if the chairman is unavailable, with the assigned city department on the items to be included on the agenda of the meetings prior to preparation and distribution of the agenda by the assigned city department; and

(6) To review and approve the official minutes of the board or commission as prepared by the assigned city department no later than thirty (30) days after the meeting or commission and if such minutes cannot be approved, for any reason,

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[6]**Charter reference—**Boards and commissions, § 6.01 et seq.

Cross references—Building code, electrical code, and plumbing and mechanical code advisory board of appeals, § 8-110; historic preservation commission, § 14A-3.

Zoning and Development Code reference—Development review commission, Section 1-312.

within such period of time, such minutes shall be transferred to the city council without approval.

(b) All boards and commissions shall have the authority to create subcommittees, subject to the following restrictions:

(1) Subcommittees shall be created upon written notice to the city council. The request shall state in detail the purpose for its creation, the members of the board or commission who will comprise its membership and the anticipated additional resources needed to adequately staff the subcommittee;

(2) All subcommittees shall sunset within one (1) year of creation, or until its intended purpose has been met. The city council may dissolve a subcommittee at any time;

(3) All members of subcommittees must be current members of originating board or commission;

(4) No board or commission may have more than two (2) active subcommittees at the same time; and

(5) Subcommittees must meet all requirements of state law, the city charter and this code.

(Ord. No. 2008.01, 1-24-08; Ord. No. 2008.68, 11-20-08; Ord. No. 2012.35, 8-9-12)

Sec. 2-182. Terms and removal.

(a) The mayor, with the approval of the city council, shall select for appointment and reappointment the members of each board and commission. Unless otherwise specified, the members of each board and commission shall be selected from residents of the city.

(b) The term of office for each member of the board and commission shall be from the first of January of each year and end on the 31st day of December, three (3) years thereafter except if otherwise provided in this article.

(c) Members of the board and commission may not serve more than three (3) total terms on any board or commission, and not more than two (2) complete consecutive terms.

(d) Any vacancy shall be filled for the unexpired term of the member whose office is vacant in the same manner as such member received original appointment.

(e) The mayor, with the approval of the city council, may for cause remove any member of the board or commission.

(Ord. No. 2008.01, 1-24-08)

Sec. 2-183. Compensation of members.

Members shall receive no compensation for their service.
(Ord. No. 2008.01, 1-24-08)

Secs. 2-184—2-190. Reserved.

DIVISION 2. HISTORY MUSEUM AND LIBRARY ADVISORY BOARD

Sec. 2-191. Established; composition.

(a) There is hereby established the Tempe history museum and library advisory board of the city to be composed of nine (9) members.

(b) The community services director shall designate a staff representative to serve the history museum and library advisory board in an advisory capacity.
(Ord. No. 1079, § 1, 6-21-84; Ord. No. 2008.01, 1-24-08; Ord. No. 2010.02, 2-4-10; Ord. No. O2014.22, 6-12-14; Ord. No. O2014.36, 9-4-14)

Sec. 2-192. Repealed.
(Ord. No. 1079, § 2-4, 6-21-84; Ord. No. 2008.01, 1-24-08)

Sec. 2-193. Repealed.
(Ord. No. 1079, § 5, 6-21-84; Ord. No. 2001.17, 7-26-01; Ord. No. 2008.01, 1-24-08)

Sec. 2-194. Officers.

The officers of the history museum and library advisory board shall be selected by the board members at the first meeting of the board following the thirtieth day of June of each year, and shall serve until the thirtieth day of June of the next succeeding year. No officer shall serve in the same capacity for more than two (2) consecutive one year terms.
(Ord. No. 1079, § 6, 6-21-84; Ord. No. O2014.22, 6-12-14; Ord. No. O2014.36, 9-4-14)

Sec. 2-195. Powers and duties.

The history museum and library advisory board shall have the following powers and duties:

(1) To assist and advise the city council, in conjunction with the community services director and the historic preservation commission in the establishment of essential policies, rules and regulations relating to the planning, acquisition, disposition, operation, use, care and maintenance of areas and structures owned, leased or otherwise acquired by the city for use as historical museums or interpretive sites;

(2) To assist and advise the city council, in conjunction with the community services director, in the establishment of essential policies, rules and regulations relating to the planning, acquisition, disposition, operation, use, care and

maintenance of structures owned, leased or otherwise acquired by the city for use as libraries;

(3) To assist and advise the city council in the establishment of essential policies, rules and regulations relating to the acquisition, conservation and use of historical materials and artifacts and library materials;

(4) To assist and advise the community services department staff liaison in the development of a continuing plan for the city's history museum program and for the city's library program;

(5) To assist and advise the community services department in establishing priorities at budget time for those items other than administrative functions relating to history museum policy and library policy;

(6) To receive, accept and acquire subject to final action by the city council by gift, bequest or devise real and personal property of every kind, nature and description in the name of the city for history museum purposes or for library purposes subject to the terms of the gift; and

(7) To suggest to the mayor and city council qualified and interested persons eligible for appointment for board vacancies.

(Ord. No. 1079, § 7, 6-21-84; Ord. No. 96.50, 1-9-97; Ord. No. 2001.17, 7-26-01; Ord. No. 2008.01, 1-24-08; Ord. No. 2010.02, 2-4-10; Ord. No. O2014.22, 6-12-14; Ord. No. O2014.36, 9-4-14)

Secs. 2-196—2-199. Reserved.

DIVISION 3. MUNICIPAL ARTS COMMISSION

Sec. 2-200. Establishment; composition.

(a) There is hereby established a Tempe municipal arts commission for the city to be composed of thirteen (13) members.

(b) The community services director or his designee shall serve the commission in an advisory capacity.

(Ord. No. 88.62, 9-8-88; Ord. No. 2008.01, 1-24-08; Ord. No. 2010.02, 2-4-10; Ord. No. O2014.22, 6-12-14)

Sec. 2-201. Repealed.

(Ord. No. 88.62, 9-8-88; Ord. No. 2008.01, 1-24-08)

Sec. 2-202. Repealed.

(Ord. No. 88.62, 9-8-88; Ord. No. 95.21, 7-20-95; Ord. No. 96.39, 10-24-96; Ord. No. 2001.17, 7-26-01; Ord. No. 2008.01, 1-24-08)

Sec. 2-203. Officers.

The officers of the commission shall be selected by the commission members at the first meeting of the commission following the thirty first day of December of each year, and shall serve until the thirty-first day of December of the next succeeding year. No officer shall serve in the same capacity for more than two (2) consecutive one-year terms.
(Ord. No. 88.62, 9-8-88)

Sec. 2-204. Powers and duties.

The commission shall have the following powers and duties:

(1) To assist and advise the city council, through the community services department, in the development of a municipal arts plan and any subplans thereto;

(2) To assist and advise the city council, through the community services department, in the establishment of essential policies, rules and regulations relating to the presentation, acquisition, disposition, maintenance, use, care and promotion of public arts within the city;

(3) To recommend to the city council, through the community services department, a yearly update to the municipal arts plan based upon projected revenues from the municipal arts fund. Revenue projections will be supplied to the commission by the city's community services director. The plan will include recommended programs and activities as well as proposed sites for placement of public art and estimated cost of purchases for each site. The plan will be updated annually in conjunction with the city's annual budget process;

(4) To recommend to the city council, through the community services department, a method or methods of selecting and commissioning artists; and

(5) To recommend to the city council, through the community services department, the selection and commissioning of artists for the placement of works of art on public sites approved by the city council. Recommendations will include estimates of all costs, including any operational and maintenance costs.

(Ord. No. 88.62, 9-8-88; Ord. No. 95.21, 7-20-95; Ord. No. 96.39, 10-24-96; Ord. No. 2001.17, 7-26-01; Ord. No. 2008.01, 1-24-08; Ord. No. 2010.02, 2-4-10)

DIVISION 4. SPONSORSHIP REVIEW COMMITTEE

Sec. 2-205. Established; composition.

(a) There is hereby established a sponsorship review committee to be composed of seven (7) members.

(b) Three (3) members of the committee shall be appointed by the Tempe Convention and Visitors Bureau ("TCVB") board of directors. Three (3) members shall be appointed by the mayor with the approval of the city council. One member of the committee shall be jointly appointed by the mayor, with council approval, and the TCVB board of directors.

(c) The community services director or a designated staff representative shall serve the sponsorship review committee in an advisory capacity.
(Ord. No. 92.41, 8-27-92; Ord. No. 2008.01, 1-24-08; Ord. No. 2008.10, 2-21-08; Ord. No. 2010.02, 2-4-10)

Sec. 2-206. Repealed.
(Ord. No. 92.41, 8-27-92; Ord. No. 2008.01, 1-24-08)

Sec. 2-207. Repealed.
(Ord. No. 92.41, 8-27-92; Ord. No. 97.20, 4-10-97; Ord. No. 2001.17, 7-26-01; Ord. No. 2005.18, 4-7-05; Ord. No. 2006.25, 4-6-06; Ord. No. 2008.01, 1-24-08)

Sec. 2-208. Officers.

The TCVB director and CEO shall serve as committee chairperson.
(Ord. No. 92.41, 8-27-92; Ord. No. 2008.10, 2-21-08)

Sec. 2-209. Powers and duties.

The sponsorship review committee shall have the following powers and duties:

(1) To make recommendation(s) to the TCVB board of directors and the city council concerning city sponsorship, type of sponsorship and degree of sponsorship for the majority of requests received by the city on an annual basis for both traditionally sponsored events and for new requests; and

(2) To make funding and services decisions concerning new events from monies previously appropriated by the city council and the TCVB board of directors.
(Ord. No. 92.41, 8-27-92; Ord. No. 97.20, 4-10-97; Ord. No. 2001.17, 7-26-01; Ord. No. 2005.18, 4-7-05; Ord. No. 2006.25, 4-6-06; Ord. No. 2008.01, 1-24-08; Ord. No. 2008.10, 2-21-08)

Sec. 2-210. Funding requirements.

The city and the TCVB shall each contribute an equal amount to a joint sponsorship fund, as determined by the TCVB and the city council during their respective annual budget processes.
(Ord. No. 92.41, 8-27-92; Ord. No. 97.20, 4-10-97; Ord. No. 2001.17, 7-26-01; Ord. No. 2005.18, 4-7-05; Ord. No. 2006.25, 4-6-06; Ord. No. 2008.10, 2-21-08)

Sec. 2-211. Repealed.
(Ord. No. 92.41, 8-27-92; Ord. No. 97.20, 4-10-97; Ord. No. 2001.17, 7-26-01; Ord. No. 2005.18, 4-7-05; Ord. No. 2006.25, 4-6-06; Ord. No. 2008.10, 2-21-08)

Sec. 2-212. Repealed.
(Ord. No. 92.41, 8-27-92; Ord. No. 97.20, 4-10-97; Ord. No. 2001.17, 7-26-01; Ord. No. 2005.18, 4-7-05; Ord. No. 2006.25, 4-6-06; Ord. No. 2008.10, 2-21-08)

Secs. 2-213—2-214. Reserved.

DIVISION 5. AVIATION COMMISSION

Sec. 2-215. Established; composition.

(a) There is hereby established the Tempe aviation commission to be composed of nine (9) members.

(b) In addition to the terms of office as specified in § 2-182 of this article, terms shall be staggered so that the term of no more than four (4) members shall conclude in any given year.

(c) There shall be commission members from neighborhoods located in geographic areas throughout the community that are impacted by aircraft operations including areas within the LDN 65 noise contour for the Phoenix Sky Harbor International Airport.

(d) The city manager or his designee shall serve the aviation commission in an advisory capacity.
(Ord. No. 95.15, 4-27-95; Ord. No. 2008.01, 1-24-08; Ord. No. 2010.36, 11-4-10; Ord. No. O2014.22, 6-12-14)

Sec. 2-216. Repealed.
(Ord. No. 95.15, 4-27-95; Ord. No. 2008.01, 1-24-08)

Sec. 2-217. Repealed.
(Ord. No. 95.15, 4-27-95; Ord. No. 2008.01, 1-24-08)

Sec. 2-218. Repealed.
(Ord. No. 95.15, 4-27-95; Ord. No. 2008.01, 1-24-08)

Sec. 2-219. Officers.

The initial officers of the commission shall be selected by the mayor, with the approval of the city council. Thereafter, the officers of the commission shall be selected by the commission members at the first meeting of commission following the 31st day of December of each year and shall serve from January 1 until the 31st day of December of the next succeeding year. No officer may serve in the same capacity for more than three (3) consecutive one-year terms.
(Ord. No. 95.15, 4-27-95)

Sec. 2-220. Powers and duties.

The aviation commission shall have the following powers and duties:

(1) To advise the mayor and city council and assist city departments regarding the impact of aircraft and airport operations on Tempe residents;

(2) To advise the mayor and city council and assist city departments in the monitoring, implementation and enforcement of agreements made between the City of Phoenix and the City of Tempe concerning the operations of Sky Harbor International Airport;

(3) To advise the mayor and city council and assist city department in studies conducted of local airports and their development, with regard to potential impacts on Tempe residents; and

(4) To advise the mayor and city council and assist city departments on land use measures that could mitigate the impact of aircraft and airport operations.

(Ord. No. 95.15, 4-27-95; Ord. No. 2008.01, 1-24-08; Ord. No. 2010.36, 11-4-10)

Secs. 2-221—2-224. Reserved.

DIVISION 6. HUMAN RELATIONS COMMISSION

Sec. 2-225. Established; composition.

(a) There is hereby established the Tempe human relations commission to be composed of eleven (11) members.

(b) The city manager or his designee shall serve the human relations commission in an advisory capacity.
(Ord. No. 95.18, 6-1-95; Ord. No. 2008.01, 1-24-08; Ord. No. O2014.22, 6-12-14)

Sec. 2-226. Repealed.
(Ord. No. 95.18, 6-1-95; Ord. No. 2008.01, 1-24-08)

Sec. 2-227. Repealed.
(Ord. No. 95.18, 6-1-95; Ord. No. 2008.01, 1-24-08)

Sec. 2-228. Repealed.
(Ord. No. 95.18, 6-1-95; Ord. No. 2008.01, 1-24-08)

Sec. 2-229. Officers.

The initial officers of the commission shall be selected by the mayor with the approval of the city council. Thereafter, the officers of the commission shall be selected by the commission members at the first meeting of commission following the 31st day of December of each year and shall serve from January 1 until the 31st day of December of the next succeeding year. No officer may serve in the same capacity for more than three (3) consecutive one-year terms.
(Ord. No. 95.18, 6-1-95)

Sec. 2-230. Powers and duties.

The human relations commission shall have the following powers and duties:

(1) To advise the mayor and city council and assist city departments in promoting mutual understanding and respect among the many groups of people who live, work and spend time in our community;

(2) To advise the mayor and city council and assist city departments on ways to eliminate prejudice and discrimination;

(3) To advise the mayor and city council and assist city departments on ways in which people from different cultural backgrounds can be made to feel at home in the community; and

(4) To advise the mayor and city council and assist city departments on ways in which information on human relations topics can be disseminated including: conducting surveys and studies, convening forums, seminars and workshops, and sponsoring special event and award recognitions.

(Ord. No. 95.18, 6-1-95; Ord. No. 2008.01, 1-24-08)

Secs. 2-231—2-234. Reserved.

DIVISION 7. PARKS, RECREATION, GOLF, AND DOUBLE BUTTE CEMETERY ADVISORY BOARD

Sec. 2-235. Established; composition.

(a) There is hereby established a parks, recreation, golf, and double butte cemetery advisory board for the city to be composed of eleven (11) members as an advisory board to city council.

(b) The city manager shall designate a staff representative to serve the parks, recreation, golf, and double butte cemetery advisory board in an advisory capacity.
(Ord. No. 96.16, 8-29-96; Ord. No. 2008.01, 1-24-08; Ord. No. 2010.02, 2-4-10; Ord. No. 2010.03, 3-4-10; Ord. No. O2014.22, 6-12-14)

Sec. 2-236. Repealed.
(Ord. No. 96.16, 8-29-96; Ord. No. 2008.01, 1-24-08)

Sec. 2-237. Repealed.
(Ord. No. 96.16, 8-29-96; Ord. No. 2008.01, 1-24-08)

Sec. 2-238. Repealed.
(Ord. No. 96.16, 8-29-96; Ord. No. 2001.17, 7-26-01; Ord. No. 2006.25, 4-6-06; Ord. No. 2008.01, 1-24-08)

Sec. 2-239. Officers.

The officers of the board shall be selected by the board members at the first meeting of the board following the first day of September of each year and shall serve until the 31st day of August of the next succeeding year.
(Ord. No. 96.16, 8-29-96; Ord. No. 2010.03, 3-4-10)

Sec. 2-240. Powers and duties.

The parks, recreation, golf, and double butte cemetery advisory board shall have the following powers and duties:

(1) To advise the city council and assist the city manager in the establishment of essential policies, rules and regulations relating to the planning, acquisition, disposition, operation, use, care and maintenance of golf facilities owned, leased or otherwise acquired by the city for use as municipal golf courses;

(2) To advise the city council and assist city staff in the establishment of essential policies, management plans, rules and regulations relating to the planning, acquisition, disposition, operation, use, care and maintenance of areas and structures owned, leased or otherwise acquired by the city for use as parks and preserves;

(3) To advise the city council and assist city staff in the establishment of essential policies, management plans, rules and regulations relating to the acquisition, conservation, and use of parks and preserves;

(4) To assist and advise the city council, through the community services department, in the establishment of essential policies, rules and regulations relating to the planning, acquisition, disposition, operation, use, care, maintenance, design and construction of cemetery facilities owned, leased or otherwise acquired by the city;

(5) To assist the community services department and other city departments in establishing priorities at budget time for those items other than administrative

functions relating to golf, park, preserve and recreation policy. The recommendations of the committee shall be forwarded to the city council;

(6) To assist and advise the city council in establishing priorities at budget time for those items other than administrative functions relating to the cemetery. The recommendations of the committee shall be forwarded to the city council;

(7) To assist the community services department staff liaison in the development of a continuing plan for the city's park and recreation program;

(8) To receive, accept and acquire subject to final action by the city council by gift, bequest or devise real and personal property of every kind, nature and description in the name of the city for park and preserve purposes subject to the terms of the gift;

(9) To suggest to the mayor and city council qualified and interested persons eligible for appointment for board vacancies; and

(10) To serve as the city tree board with the responsibility to study, develop, update annually and administer a written plan for the care, management, planting, replanting and removal or disposition of trees and shrubs within parks, preserves, street rights-of-way and public places owned by the city to ensure that the city will continue to realize the benefits provided by an urban forest. Such plan will be presented to the city council and upon their acceptance and approval shall constitute the official city tree plan for the city.

(Ord. No. 96.16, 8-29-96; Ord. No. 2001.17, 7-26-01; Ord. No. 2006.25, 4-6-06; Ord. No. 2008.01, 1-24-08; Ord. No. 2010.02, 2-4-10; Ord. No. 2010.03, 3-4-10; Ord. No. O2014.22, 6-12-14; Ord. No. O2014.51, 10-2-14)

Secs. 2-241—2-244. Reserved.

DIVISION 8. TRANSPORTATION COMMISSION

Sec. 2-245. Established; composition.

(a) There is hereby established a transportation commission consisting of fifteen (15) members.

(b) The director of the public works department or a designated staff representative shall serve the transportation commission in an advisory capacity.
(Ord. No. 96.28, 8-29-96; Ord. No. 2008.01, 1-24-08; Ord. No. 2010.02, 2-4-10)

Sec. 2-246. Repealed.
(Ord. No. 96.28, 8-29-96; Ord. No. 2004.52, 12-9-04; Ord. No. 2008.01, 1-24-08)

Sec. 2-247. Repealed.

(Ord. No. 96.28, 8-29-96; Ord. No. 2008.01, 1-24-08)

Sec. 2-248. Repealed.
(Ord. No. 96.28, 8-29-96; Ord. No. 2001.17, 7-26-01; Ord. No. 2008.01, 1-24-08)

Sec. 2-249. Officers.

The officers of the commission shall be selected by the commission members at the first meeting of the commission following the 31st day of December of each year and shall serve until the 31st day of December of the next succeeding year. No officer shall serve in the same capacity for more than two (2) consecutive one-year terms.
(Ord. No. 96.28, 8-29-96)

Sec. 2-250. Powers and duties.

The transportation commission shall have the following powers and duties:

(1) To suggest to the mayor and city council qualified and interested persons eligible for appointment for commission vacancies;

(2) To consult, through the chairman of the commission, with the public works department, as to the items to be included on the agenda of meetings of the commission prior to the preparation and distribution of the agenda by the public works department;

(3) To prepare and submit an annual report to the city manager and city council including applicable council committees;

(4) To advise and make recommendations to the city council and to assist city departments and the city manager to plan and implement a balanced transportation system within Tempe which incorporates all forms of transportation in a unified, interconnected manner and complements land use, making a positive environmental impact through reduction of energy consumption, air pollution and congestion, while promoting economic development and providing mobility for all persons, including elderly and disabled;

(5) To advise and make recommendations to the city council and to assist city departments and the city manager on appropriate performance standards and benchmarks for use in evaluating the city's transportation system and program, based on nationally recognized guidelines and local priorities;

(6) To advise and make recommendations to the city council and to assist city departments and the city manager on transportation plans, projects and ordinances, including but not limited to:

a. To recommend and review short and long-range plans and studies for the city's transportation system, including streets, transit, bicycling, pedestrians and demand management;

b. To periodically review and update the transportation elements of the city's general plan;

c. To provide input and review regional, state and federal transportation plans, projects and issues especially as provided by federal law; and

d. To promote and maintain bicycling as a safe and effective mode of travel for recreation, health and transportation.

(7) To advise and recommend to the city council and to assist city departments and the city manager annually on the elements of prioritized, unified operating and capital improvement program budgets for transportation;

(8) To provide a forum for public hearings and other public involvement mechanisms to assure community-based transportation plans, projects and issues, and to meet all federal and other guidelines for public involvement in transportation projects where applicable; and

(9) To take any such further actions as may be deemed necessary and appropriate to further the goals of the commission.

(Ord. No. 96.28, 8-29-96; Ord. No. 2001.17, 7-26-01; Ord. No. 2004.52, 12-9-04; Ord. No. 2008.01, 01-24-08)

Secs. 2-251—2-254. Reserved.

DIVISION 9. MAYOR'S YOUTH ADVISORY COMMISSION

Sec. 2-255. Established; composition.

(a) There is hereby established a mayor's youth advisory commission to be composed of twenty-four (24) members.

(b) The twenty-four (24) members of the mayor's youth advisory commission shall be selected from residents of the city, or attend school within the city, enrolled in seventh through twelfth grades.

(c) Membership shall be composed of at least one representative from each Tempe Elementary School District No. 3 and Kyrene School District middle school located within the city and at least two (2) representatives from each Tempe Union High School District school located within the city. Remaining members will be selected at large and shall reside in Tempe or attend school within the city.

(d) The community services director or his designee shall serve the mayor's youth advisory commission in an advisory capacity.
(Ord. No. 97.07, 2-27-97; Ord. No. 2008.01, 01-24-08; Ord. No. 2010.02, 2-4-10)

Sec. 2-256. Repealed.
(Ord. No. 97.07, 2-27-97; Ord. No. 2000.38, 1-25-01; Ord. No. 2008.01, 01-24-08)

Sec. 2-257. Repealed.
(Ord. No. 97.07, 2-27-97; Ord. No. 2001.17, 7-26-01; Ord. No. 2008.01, 01-24-08)

Sec. 2-258. Officers.

The officers of the mayor's youth advisory commission shall be selected by the commission members at the first meeting of the commission following the first day of October of each year and shall serve until the first meeting of the commission following the first day of October of the next succeeding year. No officer shall serve in the same capacity for more than two (2) consecutive terms.
(Ord. No. 97.07, 2-27-97)

Sec. 2-259. Powers and duties.

The mayor's youth advisory commission shall have the following powers and duties:

(1) To make recommendation(s) to the mayor and city council concerning the interests, needs and welfare of the youth within the community on an annual basis;

(2) To advise the mayor and city council and assist city departments on any topic the commission feels is appropriate regarding youth issues and related matters within the city;

(3) To advise the mayor and city council and assist city departments on ways in which information regarding youth issues can be disseminated including: conducting surveys and studies, convening forums, seminars and workshops, and sponsoring special event and award recognitions;

(4) To encourage and promote the education of youth regarding city government and the importance of citizen input, participation and responsibility; and

(5) To solicit from each of the city's middle and high schools qualified and interested persons eligible for appointment for commission vacancies and forward those names to the mayor and city council.

(Ord. No. 97.07, 2-27-97; Ord. No. 2001.17, 7-26-01; Ord. No. 2008.01, 01-24-08)

Secs. 2-260—2-264. Reserved.

DIVISION 10. COMMISSION ON DISABILITY CONCERNS

Sec. 2-265. Established; composition.

(a) There is hereby established a commission on disability concerns for the city to be composed of nine (9) members.

(b) The city manager or his designee shall designate a city staff representative to serve as advisory capacity for the commission on disability concerns.
(Ord. No. 96.45, 12-12-96; Ord. No. 2008.01, 01-24-08; Ord. No. O2014.22, 6-12-14)

Sec. 2-266. Repealed.
(Ord. No. 96.45, 12-12-96; Ord. No. 2008.01, 01-24-08)

Sec. 2-267. Repealed.
(Ord. No. 96.45, 12-12-96; Ord. No. 2008.01, 01-24-08)

Sec. 2-268. Repealed.
(Ord. No. 96.45, 12-12-96; Ord. No. 2008.01, 01-24-08)

Sec. 2-269. Officers.

The initial officers of the commission shall be selected by the mayor, with the approval of the city council. Thereafter, the officers of the commission shall be selected by the commission members at the first meeting of the commission following the first day of July of each year and shall serve until the 30th day of June of the next succeeding year.
(Ord. No. 96.45, 12-12-96)

Sec. 2-270. Powers and duties.

The commission on disability concerns shall have the following powers and duties:

(1) To suggest to the mayor and city council qualified and interested persons for appointment to commission vacancies;

(2) To advise and make recommendations to the city council and to assist city departments and the city manager in the establishment of essential policies, rules and regulations relating to compliance with federal and state disabilities legislation or regulations and on other disabilities concerns and issues as needed;

(3) To prepare and submit an annual report to the city manager and city council; and

(4) To take further actions as may be deemed necessary and appropriate to further the goals of the commission.
(Ord. No. 96.45, 12-12-96; Ord. No. 2008.01, 01-24-08)

Secs. 2-271—2-274. Reserved.

DIVISION 11. RIO SALADO CITIZEN ADVISORY COMMISSION

Sec. 2-275. Repealed.
(Ord. No. 96.49, 12-12-96; Ord. No. 2003.07, 3-27-03; Ord. No. 2008.01, 01-24-08, Ord. No. 2010.03, 3-4-10)

Sec. 2-276. Repealed.
(Ord. No. 96.49, 12-12-96; Ord. No. 2008.01, 01-24-08)

Sec. 2-277. Repealed.
(Ord. No. 96.49, 12-12-96; Ord. No. 2008.01, 01-24-08)

Sec. 2-278. Repealed.
(Ord. No. 96.49, 12-12-96; Ord. No. 2005.18, 4-7-05; Ord. No. 2008.01, 01-24-08)

Sec. 2-279. Repealed.
(Ord. No. 96.49, 12-12-96, Ord. 2010.03, 3-4-10)

Sec. 2-280. Repealed.
(Ord. No. 96.49, 12-12-96; Ord. No. 2003.07, 3-27-03; Ord. No. 2005.18, 4-7-05; Ord. No. 2008.01, 01-24-08, Ord. 2010.03, 3-4-10)

Secs. 2-281—2-284. Reserved.

DIVISION 12. TEMPE CITIZENS' PANEL FOR REVIEW OF POLICE COMPLAINTS AND USE OF FORCE

Sec. 2-285. Established; composition.

(a) There is hereby established a Tempe citizens' panel for review of police complaints and use of force ("panel") to be composed of fifteen (15) citizen members and four (4) police department members consisting of two (2) sergeants and two (2) line level officers, who shall serve for a two (2) year term. The police department members shall be selected by the chief.

(b) When functioning as a review sub-panel as described in § 2-288, each sub-panel shall consist of six (6) citizen members and two (2) police department members consisting of one sergeant and one line level officer. The citizen members of each sub-panel shall be selected by the city manager. The police department members of each sub-panel shall be selected by the chief.

(c) The chief shall appoint an assistant chief to serve as the non-voting chairperson/ facilitator of the panel and each sub-panel.

(d) This panel shall act in an advisory capacity to the chief of police and the city manager.

(e) The fifteen (15) citizen members of the panel shall be selected from residents of the city. The mayor will make three (3) selections and each council member will make two (2) selections.

(f) The term of office of citizen members shall be for three (3) years and shall commence on the first day of January of each year and end on the 31st day of December, three (3) years thereafter, except for the initial citizen members of the panel. Such terms shall be staggered so that the term of no more than five (5) citizen members shall conclude in any given year.

(g) Citizen members of the panel may not serve more than two (2) complete consecutive terms. Any citizen member vacancies shall be filled for the remainder of the unexpired term in the same manner as such citizen member received original appointment.

(h) The city manager may for cause remove any citizen member of the panel.

(i) Prospective citizen panel members may not serve if any of the following apply:

(1) Have been arrested by the Tempe police department within the last five (5) years;

(2) Have any felony convictions;

(3) Are related directly to a Tempe police department employee;

(4) Are a current or former Tempe police department employee;

(5) Are a former employee of any other police agency within five (5) years of their police employment; or

(6) Are an adversary party, a representative of an adversary party, or have any financial litigation or claim against the city relating to the police department or any individual in the police department.

(Ord. No. 99.13, 7-15-99; Ord. No. 2008.01, 01-24-08; Ord. No. 2008.68, 11-20-08)

Sec. 2-286. Repealed.

(Ord. No. 99.13, 7-15-99; Ord. No. 2008.01, 01-24-08)

Sec. 2-287. Repealed.

(Ord. No. 99.13, 7-15-99; Ord. No. 2008.68, 11-20-08)

Sec. 2-288. Powers and duties.

(a) The Tempe citizens' panel for review of police complaints and use of force shall have the following powers and duties:

(1) To review such rules and regulations as it deems necessary for its government and for the faithful performance of its duties; and

(2) To provide six (6) members of the panel for each sub-panel. A total of six (6) members of the sub-panel (officers and citizens) shall constitute a sub-panel quorum. The affirmative vote of five (5) members of each sub-panel shall be required for passage of any matter before the panel.

(b) The sub-panel shall have the following powers and duties:

(1) To review all police shootings and any police incidents wherein direct physical force by the police results in serious injury or death. Serious injury is defined as physical injury that creates a reasonable risk of death, or that causes serious and permanent disfigurement, serious impairment of health or loss or protracted impairment of the function of any bodily organ or limb;

(2) To review the findings of the police department's investigation of unsustained, unfounded or exonerated citizen complaints, when that citizen requests a review of the police department's findings. A request for review must be made within thirty (30) days from the date the citizen is notified of the findings of the police department's investigation; and

(3) To review any police department incident, at the request of the chief of police.

(c) After a review of the record, each review panel shall make one of the following findings in a written report to the chief of police:

(1) Agree with the findings of the police department investigation;

(2) Disagree with the findings of the police department investigation;

(3) Advise the chief of police that further investigation is warranted; or

(4) Upon a review of a use of police force incident, the review panel shall make a further finding whether the use of police force was within police department policy.

(d) The panel may make recommendations to the chief of police concerning training programs, revisions of policies or procedures, commendable actions, preventive or corrective measures (except for employee discipline) as it relates to the sub-panel findings of the incident being reviewed.
(Ord. No. 99.13, 7-15-99; Ord. No. 2008.68, 11-20-08; Ord. No. 2009.37, 10-22-09)

Secs. 2-289—2-294. Reserved.

DIVISION 13. DOUBLE BUTTE CEMETERY ADVISORY COMMITTEE [REPEALED]

Sec. 2-295. Repealed.
(Ord. No. 2000.21, 6-8-00; Ord. No. 2006.25, 4-6-06; Ord. No. 2008.01, 01-24-08; Ord. No. 2010.02, 2-4-10; Ord. No. O2014.22, 6-12-14)

Sec. 2-296. Repealed.
(Ord. No. 2000.21, 6-8-00; Ord. No. 2008.01, 01-24-08)

Sec. 2-297. Repealed.
(Ord. No. 2000.21, 6-8-00; Ord. No. 2008.01, 01-24-08)

Sec. 2-298. Repealed.
(Ord. No. 2000.21, 6-8-00; Ord. No. 2001.17, 7-26-01; Ord. No. 2006.25, 4-6-06; Ord. No. 2008.01, 01-24-08)

Sec. 2-299. Repealed.
(Ord. No. 2000.21, 6-8-00; Ord. No. O2014.22, 6-12-14)

Sec. 2-300. Repealed.
(Ord. No. 2000.21, 6-8-00; Ord. No. 2001.17, 7-26-01; Ord. No. 2006.25, 4-6-06; Ord. No. 2008.01, 01-24-08; Ord. No. 2010.02, 2-4-10; Ord. No. O2014.22, 6-12-14)

Secs. 2-301—2-304. Reserved.

DIVISION 14. NEIGHBORHOOD ADVISORY COMMISSION

Sec. 2-305. Established; composition.

(a) There is hereby established the neighborhood advisory commission to be composed of fifteen (15) members, and each member must have been a resident of the city for at least one year prior to the appointment.

(b) Members shall be appointed proportionately to the geographic distribution of population by zip codes, subject to change as population shifts occur.

(c) The neighborhood program administrator or his or her designee shall serve the neighborhood advisory commission in an advisory capacity.
(Ord. No. 2000.47, 11-2-00; Ord. No. 2008.01, 01-24-08; Ord. No. O2014.22, 6-12-14)

Sec. 2-306. Repealed.
(Ord. No. 2000.47, 11-2-00; Ord. No. 2008.01, 01-24-08)

Sec. 2-307. Repealed.
(Ord. No. 2000.47, 11-2-00; Ord. No. 2008.01, 01-24-08)

Sec. 2-308. Repealed.
(Ord. No. 2000.47, 11-2-00; Ord. No. 2008.01, 01-24-08)

Sec. 2-309. Officers.

The officers of the commission shall be selected by the commission members at the first meeting of the commission following the 31st day of December each year and shall serve from January 1 until the 31st day of December of the next succeeding year. No officer may serve in the same capacity for more than three (3) consecutive one-year terms.
(Ord. No. 2000.47, 11-2-00)

Sec. 2-310. Powers and duties.

The neighborhood advisory commission shall have the following powers and duties:

(1) To organize and appoint members of the commission to serve on standing committees as the need arises, subject to all administrative guidelines adopted by the commission;

(2) To propose and make recommendations to the mayor and city council and assist city departments on specific programs that are designed to build upon neighborhood opportunities and strengths as well as prevent the decline and deterioration of neighborhoods by recognizing and supporting the aspirations of residents and their neighborhood;

(3) To review projects and concepts developed or proposed by the neighborhood program office staff, the neighborhood advisory commission and by citizens to the commission;

(4) To advise the mayor and city council and assist city departments on ways in which information on neighborhood topics can be gathered and disseminated including: conducting surveys and studies, convening forums, seminars and workshops, and sponsoring special event and award recognition;

(5) Subject to approval and final action by the city council, to receive, accept and acquire by gift, bequest or devise real and personal property of every kind, nature and description in the name of the city for neighborhood purposes subject to the terms of such gift, bequest or devise; and

(6) To recommend to the mayor and city council qualified and interested persons eligible for appointment for commission vacancies.

(Ord. No. 2000.47, 11-2-00; Ord. No. 2008.01, 01-24-08)

Secs. 2-311—2-314. Reserved.

DIVISION 15. REDEVELOPMENT REVIEW COMMISSION[7]

Sec. 2-315. Repealed.
(Ord. No. 2002.36, 10-3-02; Ord. No. 2004.42, 1-20-05)

Sec. 2-316. Repealed.
(Ord. No. 2002.36, 10-3-02; Ord. No. 2004.42, 1-20-05)

Sec. 2-317. Repealed.
(Ord. No. 2002.36, 10-3-02; Ord. No. 2004.42, 1-20-05)

Sec. 2-318. Repealed.
(Ord. No. 2002.36, 10-3-02; Ord. No. 2004.42, 1-20-05)

Sec. 2-319. Repealed.
(Ord. No. 2002.36, 10-3-02; Ord. No. 2004.42, 1-20-05)

Secs. 2-320—2-324. Reserved.

DIVISION 16. TARDEADA ADVISORY BOARD [REPEALED]

Sec. 2-325. Repealed.
(Ord. No. 2005.71, 10-6-05; Ord. No. 2008.01, 01-24-08; Ord. No. O2014.22, 6-12-14)

Sec. 2-326. Repealed.
(Ord. No. 2005.71, 10-6-05; Ord. No. 2008.01, 01-24-08)

Sec. 2-327. Repealed.
(Ord. No. 2005.71, 10-6-05; Ord. No. 2008.01, 01-24-08)

Sec. 2-328. Repealed.
(Ord. No. 2005.71, 10-6-05; Ord. No. 2010.02, 2-4-10; Ord. No. O2014.22, 6-12-14)

Sec. 2-329. Repealed.
(Ord. No. 2005.71, 10-6-05; Ord. No. O2014.22, 6-12-14)

Sec. 2-330. Repealed.
(Ord. No. 2005.71, 10-6-05; Ord. No. 2008.01, 01-24-08; Ord. No. 2010.02, 2-4-10; Ord. No. O2014.22, 6-12-14)

Secs. 2-331—2-334. Reserved.

[7] **Editor's note**—Ord. No. 2004.42 repealed the Redevelopment Review Commission from the City Code and it has been incorporated into the Zoning and Development Code. See Section 1-308 of the Zoning and Development Code.

DIVISION 17. PARKS AND RECREATION BOARD[8]

Sec. 2-335. Repealed.
(Ord. No. 2008.01, 01-24-08; Ord. No. 2010.02, 2-4-10; Ord. No. 2010.03, 3-4-10)

Sec. 2-336. Repealed.
(Ord. No. 2008.01, 01-24-08; Ord. No. 2010.03, 3-4-10)

Sec. 2-337. Repealed.
(Ord. No. 2008.01, 01-24-08; Ord. No. 2010.02, 2-4-10; Ord. No. 2010.03, 3-4-10)

Sec. 2-338. Rio Salado park.

Notwithstanding the powers and duties of the parks, recreation and golf advisory board in § 2-240, the Rio Salado community facilities district board of directors shall have the power to advise the city council in the establishment of essential policies, rules and regulations for the portion of Rio Salado park within the enhanced services area.
(Ord. No. 2008.01, 01-24-08)

Secs. 2-339—2-344. Reserved.

DIVISION 18. LIBRARY ADVISORY BOARD[9] [REPEALED]

Sec. 2-345. Repealed.
(Ord. No. 2008.01, 01-24-08; Ord. No. O2014.22, 6-12-14)

Sec. 2-346. Repealed.
(Ord. No. 2008.01, 01-24-08; Ord. No. O2014.22, 6-12-14)

Secs. 2-347—2-354. Reserved.

DIVISION 19. HOUSING TRUST FUND ADVISORY BOARD

Sec. 2-355. Established; composition.

(a) There is hereby created a housing trust fund advisory board to be comprised of seven (7) members.

(b) The community development director shall designate a staff representative to serve the housing trust fund board in an advisory capacity.

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[8]**Editor's note**—Ord. No. 2010.03 consolidated the parks and recreation board and golf advisory committee into a single advisory board. Ord. No. 2014.22 consolidated the parks, recreation and golf advisory board with the double butte cemetery advisory committee. See parks, recreation, golf, and double butte cemetery advisory board, §§ 2-235—2-244.

[9]**Editor's note**—Ord. No. 2014.22 consolidated the historical museum advisory board and the library advisory board into a single advisory board. See history museum and library advisory board, §§ 2-191—2-199.

(c) Membership shall be composed of one member with experience or expertise in the subject area of real estate lending practices, one member with experience or expertise in the subject area of housing development or construction best practices, one member with experience or expertise in the subject area of the rental housing industry and four (4) members with experience or expertise in housing related issues.
(Ord. No. 2009.02, 1-22-09; Ord. No. 2009.36, 9-10-09; Ord. No. 2010.02, 2-4-10)

Sec. 2-356. Officers.

The officers of the board shall be selected by the board members at the first meeting of the board following the 31st day of December of each year and shall serve until the 31st day of December of the next succeeding year. No officer shall serve in the same capacity for more than two (2) consecutive one-year terms.
(Ord. No. 2009.02, 1-22-09)

Sec. 2-357. Powers and duties.

The housing trust fund advisory board shall have the following powers and duties:

(1) To assist and advise the community development director, or designee, with establishing the goals of the housing trust fund;

(2) To assist and advise the community development director, or designee, in the establishment of essential policies, rules and regulations relating to the implementation and ongoing operation of the housing trust fund;

(3) To review applications for funding from the housing trust fund and make recommendations to the community development director, or designee;

(4) To advise the mayor and city council at least annually on the expenditures, accomplishments and activities of the housing trust fund; and

(5) To make recommendations to the mayor and city council of qualified and interested persons eligible for appointment to commission vacancies.
(Ord. No. 2009.02, 1-22-09; Ord. No. 2010.02, 2-4-10)

Secs. 2-358—2-364. Reserved.

DIVISION 20. TEMPE VETERANS COMMISSION

Sec. 2-365. Established; composition.

(a) There is hereby established the Tempe veterans commission to be composed of eleven (11) members. The commission will include a member from each of the following existing United States military and veteran service areas:

(1) Arizona Coalition of Military Families;

(2) Arizona Department of Veterans Services;

(3) Pat Tillman Veterans Center at Arizona State University;

(4) East Valley Veterans Education Center;

(5) Phoenix Veteran's Administration Medical Center or other health and wellness organization;

(6) Housing advocacy and assistance specialist;

(7) Supportive services agency (e.g. U.S. Vets or Save The Family);

(8) Returning military veteran with an honorable discharge within 3 years prior to the date of Commission application;

(9) Retired or prior service United States military veteran;

(10) Active United States military or reservist; and,

(11) At large.

(b) In addition to the terms of office as specified in Section 2-182 of this article, terms shall be staggered so that the term of no more than four (4) members shall conclude in any given year. Members shall serve three-year terms for no more than two (2) complete consecutive terms.

(c) The human services director or designee shall serve the veterans commission staff liaison and in an advisory capacity.
(Ord. No. O2014.52, 10-2-14)

Sec. 2-366. Officers.

Three members shall serve as officers in the capacity of chair, vice-chair and secretary. Terms shall be January to December. The initial officers of the commission shall be selected by the mayor with the approval of the city council to serve a term commencing in January and ending December 31 that same year. Thereafter, the officers of the commission shall be selected by the commission members in December to begin their term in January. No officer may serve in the same capacity for more than three (3) consecutive one-year terms.
(Ord. No. O2014.52, 10-2-14)

Sec. 2-367. Powers and duties.

The Tempe veterans commission shall have the following powers and duties:

(1) To advise the mayor and city council and assist city departments on veteran programs, policies, and practices designed to improve the quality of life for veterans in Tempe;

(2) To educate the community on the status of veterans' rights, needs, and contributions to our community;

(3) To recommend ways to strengthen existing services for veterans while pursuing the creation of new program and service opportunities;

(4) To develop and promote benchmarks as outlined by the Arizona Coalition for Military Families for assisting the city of Tempe and its business community earn recognition as “Arizona Veteran Supportive Employers”;

(5) To assist in creating and supporting a community connection point to inform, guide, and direct military veterans seeking personal and professional enhancement services that may include education, mentoring, workforce support, and health and wellness; and

(6) To advise on supportive affordable housing projects for veteran families.

(Ord. No. O2014.52, 10-2-14)

Sec. 2-368. Meetings.

The Tempe veterans commission shall conduct regular meetings six (6) times in a calendar year and have the ability to call a special meeting pursuant to rules and regulations adopted in accordance with section 2-181(a)(2). Regular meetings shall not be held more frequently than two (2) meetings in any 30-day period.

(Ord. No. O2014.52, 10-2-14)

Sec. 2-369—2-372. Reserved.

ARTICLE VI. EMPLOYER, EMPLOYEE RELATIONS MEETING AND CONFERRING

DIVISION 1. IN GENERAL

Sec. 2-400. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Budget year means the biennial budget term adopted by the city the first term of which commences July 1, 2001.

Business days means Monday through Friday excluding holidays as designated by the city manager.

Day means calendar day except as otherwise stated.

Employee shall mean benefited fulltime and benefited part-time employees; but shall exclude contracted, temporary, seasonal, or new probationary employees, employees on leaves of absence where the duration of time off is in excess of six (6) months.

Employee organization receiving a majority vote shall mean an employee organization that has been designated as the official and exclusive employee organization pursuant to the petition process identified in § 2-401 or § 2-402.

Non-supervisory employees shall mean any city employee who does not have authority to hire, discharge, promote, transfer, suspend, lay off, or discipline other regular or temporary employees or to effectively recommend such action, or who is not in a confidential relationship with city management. Determination of non-supervisory and confidential status shall be made by the city manager.

Petition shall mean a form for signatures established by the city manager.
(Ord. No. 2000.43, 10-12-00; Ord. No. 2006.76, 9-21-06)

Sec. 2-401. Employee groups.

(a) There shall be four (4) employee groups within the city. They shall include:

(1) Fire fighters, all classifications up to and including captain;

(2) Police officers, all classifications up to and including sergeant;

(3) All other non-supervisory employees; and

(4) Supervisory employees except management and confidential employees as designated by the city manager.

(b) Authorized representation of an employee group shall be determined by the presentation of a petition to the city manager containing the signatures of a majority of the employees in one of the above-designated groups.
(Ord. No. 99.39, 12-9-99; Ord. No. 2000.43, 10-12-00; Ord. No. 2006.76, 9-21-06; Ord. No. 2012.06, 1-19-12)

Sec. 2-402. Petition process.

(a) Each petition submitted to the city manager shall contain the name of the employee group, the name of the employee organization, signature, printed name, date of signature, and employee position of each person signing the petition. No signature on a petition shall bear a date greater than ninety (90) days in advance of submittal. If an eligible employee signs more than one petition, then the latest dated signature shall be considered valid. Each petition shall be in a form established by the city manager. Petitions shall be submitted no earlier than July 15 and no later than September 15 preceding each budget year.

(b) The city manager shall, within thirty (30) days from receiving the petition, verify that a majority of the eligible employees within the designated group have signed the petition and shall then promptly designate the named employee organization as the official and exclusive employee organization for purposes of meeting and conferring.

(c) An employee organization shall be designated as the exclusive and official employee organization for purposes of meeting and conferring. Once an employee group has designated an employee organization, such designation can be changed no earlier than July 15 and no later than September 15 preceding each budget year as follows:

(1) The employee group shall present a petition to the city manager containing the signatures of fifty percent (50%) or more of the eligible employees in the employee group. The petition shall include the name of the employee organization being decertified. The city manager shall, within thirty (30) days from receiving the petition, verify that fifty percent (50%) or more of the eligible employees within the designated group have signed the petition and shall then promptly decertify the named employee organization as the official and exclusive employee organization for purposes of meeting and conferring; or

(2) Alternatively, an employee group may decertify its designated employee organization and designate a new employee organization by presenting a petition to the city manager containing the signatures of fifty percent (50%) plus one or more of the eligible employees in the employee group. The petition shall indicate the name of the employee group, the employee organization being decertified, and the employee organization being designated to represent those employees. The city manager shall, within thirty (30) days from receiving the petition, verify that fifty percent (50%) plus one or more of the eligible employees within the designated group have signed the petition and shall then

promptly decertify the current designated employee organization and designate the new employee organization as the official and exclusive employee organization for purposes of meeting and conferring.

(Ord. No. 2000.43, 10-12-00)

Sec. 2-403. Rights of employee organizations.

(a) Employees have the right to participate on behalf of or engage in activities on behalf of an employee organization and have the right to refrain from such activity. Employees shall be free from any interference, restraint, or coercion by any employee, supervisor, or manager for or against employee organizations. Violations will necessitate disciplinary action.

(b) There can be only one official and exclusive employee organization for each employee group for purposes of meeting and conferring. Nothing in this article shall prohibit any employee not within an employee group represented by a designated employee organization from exercising any rights the employee may have to meet with the city manager consistent with personnel rules and regulations or any city manager directive.

(c) Designated employee organizations shall have the right to bi-weekly or monthly dues deductions, if approved by the members of the organization.

(d) Dues deductions for a designated employee organization from the payroll of any participating employee must be authorized by each individual employee on the appropriate form provided by the human resources division.

(Ord. No. 2000.43, 10-12-00)

Secs. 2-404—2-424. Reserved.

DIVISION 2. MEETING AND CONFERRING

Sec. 2-425. Scope.

(a) This meet and confer process covers wages, hours, benefits and working conditions, which may include: salary or wage rates or other forms of direct monetary compensation and direct cost subjects; paid time off and procedures therefor; leaves of absence; insurance benefits; total hours of work required of an employee on each workday or workweek, including overtime, compensatory time, rest and meal periods and call-in/call-back; health and safety; training; personnel records review; discussions with personnel by group representatives; distribution of information; meet and confer procedures; city-wide uniform procedure for employee grievances; uniform process for employee discipline; rights of the employee organizations and the city; items mutually agreed upon by an employee organization and the city manager. The following items shall not be included in the meet and confer process: discipline of employees or hiring, discharging, promotions, demotions, transfers or suspensions. Non-negotiable items include any facet of the hiring, promotion or transfer of employees, the types of discipline or the grounds for demotion, discharge, suspension or discipline.

(b) It is the right of the city to determine the purpose of each of its departments, agencies, boards and commissions, and to set standards of service to be offered to the public and exercise control and discretion over its organization and operations. It is also the right of the city to direct its employees, take disciplinary action, relieve its employees from duty because of lack of work or for other legitimate reasons, determine whether goods or services shall be made, purchased or contracted for, and determine the methods, means, and personnel by which the employer's operations are to be conducted. The city has the right to take all necessary actions to maintain uninterrupted service to the community. The mayor and city council may, at their option and sole discretion, direct the city manager to consult with the city's employees, or their authorized representatives, about the direct consequences that decisions on these matters may have on wages, hours, and working conditions. The enumeration of the above rights is illustrative only and is not to be construed as being all inclusive.
(Ord. No. 2000.43, 10-12-00)

Sec. 2-426. Process.

(a) Employee organizations receiving a majority vote of all employees in a designated group shall submit proposals regarding wages, hours, benefits and working conditions to the city manager no earlier than September 15 and no later than November 15 prior to each budget year.

(b) All proposals submitted to the city manager must be in writing and in a form which can be incorporated into a memorandum of understanding. Unless otherwise provided in this article, during negotiations, proposals shall remain confidential except that they shall be available to the city manager, the employee organization representatives, the employees within the employee group, and others as designated by the city manager.

(c) Upon receiving a proposal from a designated employee organization, the city manager, shall submit a written response to the proposal to the employee organization within thirty (30) days.

(d) Within ten (10) days from the receipt of the city manager's response, representatives of the employee organization and the city manager or his designated representative shall begin “meeting and conferring” at mutually agreed upon times and places in Tempe, for the purpose of entering into a written memorandum of understanding relating to the proposals. Meetings shall be at least three (3) hours in duration, unless mutually agreed otherwise. Meetings shall continue weekly unless mutually agreed otherwise until an agreement is reached, or impasse is declared by either party. Meeting ground rules shall be promulgated by the city manager and shall be adhered to while meeting and conferring.

(e) The city manager and the representative of the employee organization, shall initial all areas of agreement. Those areas not in agreement shall be outlined as areas in dispute. If agreement still has not been reached by February 15, a neutral mediator may be requested by either party. The neutral mediator shall assist the parties to reach an agreement.

(f) The neutral mediator shall be from the Federal Mediation and Conciliation Service or a non-employee of the city that is mutually agreed upon by the city manager or his designee and

the representative of the designated employee organization. If an agreement still has not been reached by March 1, a fact finder may be requested by either party from the Federal Mediation and Conciliation Service. Standard rules of the Federal Mediation and Conciliation Service will be utilized in the selection, use and payment of the fact finder unless the parties agree otherwise.

(g) All issues not previously agreed upon will be submitted to the fact finder for a recommendation for resolution. A public session may be requested by either party. The fact finder shall issue a recommendation to both parties no later than May 15. On or before June 1, all areas of agreement, areas in dispute and still under consideration and the recommendation of the fact finder, shall be submitted to the mayor and council for their consideration.

(h) Any costs for the neutral mediator and the fact finder shall be equally shared between the city and the employee organization.

(i) The mayor and council may accept, reject or modify those areas of agreement within the proposed memorandum of understanding or may take whatever action they feel appropriate with regard to any areas in dispute consistent with the city charter. Final action by the mayor and council shall constitute the memorandum of understanding for a budget year.

(j) If there is a claim of breach of a memorandum of understanding and the employee organization's existing memorandum of understanding does not provide a process for resolution of the breach, the breach process in subsection (k) shall apply. If the matter is submitted for resolution to the mayor and city council either through the breach process established in subsection (k) or a breach process established in a memorandum of understanding, the decision of the mayor and city council shall be consistent with city charter and final and binding upon the parties and employees.

(k) In the event that there is a claim of breach of a memorandum of understanding that the employee organization and the city have been unable to informally resolve, the following process shall be followed:

(1) If either a designated employee organization or the city manager claims that the memorandum of understanding has been breached, the parties shall:

a. Within forty-five (45) days of the alleged breach, the party alleging the breach shall give written notice to the party who has allegedly breached the memorandum of understanding. The notice shall specify the provision(s) breached and the facts and evidence demonstrating or supporting the breach;

b. A written response to the alleged breach shall be submitted to the party alleging the breach within ten (10) days of the written notice;

c. Within fourteen (14) days of the written notice, the parties shall meet and attempt to resolve the matter; and

d. A written agreement which is intended to resolve the matter shall be signed by the parties and submitted to the mayor and city council at their next regularly scheduled meeting.

(2) If the parties are unable to resolve the matter, all written materials submitted in subparagraphs a. through d. above shall be submitted for resolution to the mayor and city council; and

(3) The time frames in subsection (k) above can be mutually waived by the parties.

(Ord. No. 99.39, 12-9-99; Ord. No. 2000.43, 10-12-00; Ord. No. 2001.24, 7-26-01)

Sec. 2-427. Conflicts.

In the event there is a conflict between the city's personnel rules and regulations and a memorandum of understanding, the memorandum of understanding will apply to the conflicting issue.

(Ord. No. 2000.43, 10-12-00)

Sec. 2-428. Solicitations and distributions.

(a) Solicitations of members, dues and other internal employee organization business shall be conducted only during non-duty hours and shall not interfere with the work process.

(b) Solicitation of members, dues and distribution of other internal employee organization business shall take place in non-working areas. Notice of employee organization meetings and agendas may be posted in the city's e-mail meeting folder.

(Ord. No. 2000.43, 10-12-00)

Secs. 2-429—2-500. Reserved.

ARTICLE VII. RISK MANAGEMENT

DIVISION 1. RISK MANAGEMENT TRUST BOARD

Sec.2-501. Definitions.

For the purposes of this division, the following words and phrases shall have the meanings respectively ascribed to them by this section:

Board means the risk management trust board.

Claim means any insured claim or SIR claim.

Claim cost means any internal or external cost or expense incurred by the city in response to any claim against the city, including, but not limited to, claim adjustment costs, contractual services costs, legal defense costs and attorneys' fees awarded against the city.

Insured claim means any claim falling within the coverage provisions of any insurance policy insuring the city.

Risk management cost means any internal or external cost associated with the purchase and maintenance of any commercial property insurance policy, workers' compensation policy or liability insurance policy or bond for, or on behalf of, the city, including consulting, brokerage and actuarial fees; and all other internal and external costs, fees and expenses incurred in connection with loss prevention and the management of the risk management trust fund.

Risk management program means the city's system of a combination of insurance and direct payments to pay for benefits, losses or claims.

SIR means self-insured retention.

SIR claim means any demand for direct payment of costs, including health, accident, life and disability benefits, a legal action and counter demand or counterclaim for payment of any property loss sustained or lawful claim of liability or fortuitous loss made against the city, covered corporations, covered city entities or covered individuals. The following types of claims are specifically excluded from the definition of SIR claim: (i) any claim alleging damages relating to employee benefits or salary; or (ii) or any insured claim.

SIR costs shall mean any claim cost arising from an SIR claim.

Trust fund means the risk management trust fund established by the city for the purpose of paying benefits, claims, claim costs, SIR costs and risk management costs.
(Ord. No. 2012.47, 10-18-12)

Sec. 2 -502. Trust fund—established.

There is hereby established the risk management trust fund. The city manager is directed to segregate all funds previously and hereinafter budgeted for trust fund purposes as described in this article and to maintain the trust fund separate and apart from the city general fund.
(Ord. No. 2012.47, 10-18-12)

Sec. 2-503. Trust fund—purpose.

(a) The purpose of the trust fund is to provide for the payment of benefits, losses and claims as set forth in A.R.S. § 11-981(A) which shall include legal defense costs, administrative costs, claims adjusting costs, losses (including those related to workers' compensation, personal injury or property damage), reserves for anticipated losses and lawsuits, insurance costs (including premiums), external audit and other expenses related to the operation of the city's self-insurance program. Each year, the city council, upon recommendation from the city manager in consultation with the board, will determine the amount deemed appropriate for these purposes.

(b) Such trust fund shall be funded as part of the annual budgetary and appropriation process of the city in such amounts as to provide sufficient monies to pay all reasonable anticipated claim costs and risk management costs for which the city will be responsible in the ensuing fiscal year.
(Ord. No. 2012.47, 10-18-12)

Sec. 2-504. Designation of risk management consultant.

(a) Pursuant to A.R.S. § 11-981(B)(1), the city shall designate a risk management consultant ("risk manager").

(b) Under A.R.S. § 20-283(B)(7), the risk manager is exempt from licensing requirements in Title 20.

(c) The authority granted to the city under A.R.S. § 11-981 is not subject to Title 20, except that any health, life, accident or disability benefit plan shall conform to the benefits required by Title 20.
(Ord. No. 2012.47, 10-18-12)

Sec. 2-505. Administration of trust—creation of risk management trust board.

(a) *Members*. The trust shall be administered by five (5) joint members who shall serve in an advisory capacity at the sole pleasure of the city council. The city council shall appoint five (5) members, of whom no more than one may be a member of the city council and no more than one may be an employee of the city. A majority of the members shall constitute a quorum for the purpose of conducting business of the board. At the time of initial appointment, the city council shall designate the length of terms to provide for staggered terms. The resignation, incompetency, death or termination of any or all of the members shall not terminate the trust fund or affect its continuity. During a vacancy, the remaining members may exercise the power of the

members hereunder. Vacancies among the members shall be filled by appointment by the city council for the remainder of the vacant term.

(b) *Duties*. The board shall meet at least once a year and shall make recommendations thereafter to the city council, through the city manager, regarding the investment and administration of the trust. The board shall submit an annual report to the city council through the city manager relating to the status of the trust fund and making other recommendations that the board deems necessary and appropriate. The risk manager shall coordinate the activities of the board and assist in the facilitation and administration of the trust fund in whatever manner is appropriate and necessary.

(c) *Bonding requirements*. The members shall be bonded in the same manner and procedure as for city employees.

(d) *Stop loss provision*. Pursuant to the self-insurance provisions of the city risk management program, only a certain portion of risk exposure will be self-imposed. Levels of self-insured retention for each particular type of a risk shall be recommended by city staff and established and approved by the city council.

(e) *Annual audit*. An annual audit shall be performed by an external auditor and a copy of the report shall be kept on file in the office of the city clerk for a period of not less than five (5) years. The risk manager shall coordinate this audit.

(f) *Expenditures from trust fund*. There shall be no expenditures from the trust fund for any purpose not specified in A.R.S. § 11-981 or this article.
(Ord. No. 2012.47, 10-18-12)

Sec. 2-506. Trust fund not subject to budget law.

Expenditures during the fiscal year from the trust fund and money in the trust fund at the close of the fiscal year shall not be subject to the provisions of Title 42, Chapter 17, Article 3, of the Arizona Revised Statutes.
(Ord. No. 2012.47, 10-18-12)

Sec. 2-507. Lapse of trust fund.

In the event the trust fund is no longer used by the city for the purposes stated in this article and in A.R.S. § 11-981, the fund shall revert during that fiscal year to the general fund.
(Ord. No. 2012.47, 10-18-12)

Sec. 2-508. Insurance.

(a) The city manager, or his designee, is authorized to enter into, on behalf of the city, any appropriate insurance and surety bonding contracts to provide such risk insurance as he determines to be in the city's best interests.

(b) Per A.R.S. § 11-981(F), the city is not authorized to purchase insurance from any insurer not authorized by the director of the department of insurance.
(Ord. No. 2012.47, 10-18-12)

Secs. 2-509—2-524. Reserved.

DIVISION 2. CLAIMS AND DEMANDS AGAINST CITY[10]

Sec. 2-525. Presentation of claims.

All claims against the city shall be presented as required by Arizona law.
(Ord. No. 2012.47, 10-18-12)

Sec. 2-526. Manner of approval or disapproval of claims.

(a) All claims other than for damages shall be approved, negotiated or rejected by the city manager or his designee.

(b) All claims for damages shall be approved, negotiated or rejected by the risk manager where the amount thereof or the negotiated amount of payment does not exceed the sum of twenty-five thousand dollars ($25,000). Any claims payment for damages twenty-five thousand one dollars ($25,001) or greater but less than fifty thousand dollars ($50,000) shall be approved, negotiated or rejected by the risk manager with the approval of the city attorney's office. Any claims payment for damages fifty thousand dollars ($50,000) or greater but less than seventy-five thousand dollars ($75,000) shall be approved, negotiated or rejected by the risk manager upon approval of the claims committee which shall consist of the risk manager, a member of the city attorney's office and the finance and technology director or their designees and the department director representing the department to which the claim is being allocated. Any claims payment of seventy-five thousand one dollars ($75,001) or greater shall require the approval of the city council.
(Ord. No. 2012.47, 10-18-12)

Sec. 2-527. Claims management procedures.

(a) The risk manager shall cause all claims to be processed in a timely manner by initiating the prompt investigation, evaluation, settlement or rejection of all claims in accordance with city claims management standards.

(b) The risk manager shall identify and pursue recoveries for the city from all available sources. If litigation is needed to effect recovery, the risk manager shall evaluate potential recovery against the legal costs and make the appropriate determination as to whether or not to initiate the recovery process.
(Ord. No. 2012.47, 10-18-12)

Sec. 2-528. Report to city council.

[10] **Charter reference**—Claims or demands against city, § 5.03.

The city manager shall advise the city council of all claims and demands paid, together with the name of the vendors or payees, dates paid and amounts.
(Ord. No. 2012.47, 10-18-12)

Secs. 2-529—2-534. Reserved.

ARTICLE VIII. HUMAN RELATIONS

Sec. 2-600. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Adult means a person who has attained eighteen (18) years of age.

State law reference—similar provisions, A.R.S., § 1-215(3).

Contractor means any person who has a contract with the city.

Cross reference-Procurement, Ch. 26a.

Discrimination means to exclude individuals from an opportunity or participation in any activity because of race, color, gender, gender identity, sexual orientation, religion, national origin, familial status, age, disability, or United States military veteran status, and occurs whenever similarly situated individuals of a different group are accorded different and unequal treatment in the context of a similar situation.

Employee means an individual employed for pay to perform services for an employer covered by this article and whose activities are controlled and directed by the employer, for whom services are being performed.

Employer means a person doing business within the city who has one (1) or more employees for each working day in each of twenty (20) or more calendar weeks in the current or preceding calendar year, and any agent of such person. This definition excludes:

(1) The United States or any department or agency thereof, a corporation wholly owned by the United States or any Indian tribe;

(2) The State of Arizona or any department or agency thereof, except for any political subdivision of the State of Arizona, including any community college district or high school or elementary school district;

(3) A bona fide membership club (other than a labor organization) that is exempt from taxation under the Internal Revenue Code of 1986 (as amended from time to time);

(4) A religious organization; or,

(5) An expressive association whose employment of a person protected by this article would significantly burden the association's rights of expressive association.

State law reference—similar provisions, A.R.S., § 23-613.

Familial status means the state of having one or more minor children under the age of eighteen (18) being domiciled with: a parent, guardian or another person having legal custody; the designee of such parent, guardian or another person having legal custody with written permission; or, a foster parent or other person with whom a minor child is placed by court order. This definition includes pregnant women and people securing custody of children under the age of eighteen (18) or disability.

Cross reference—Fair housing, Ch. 22, Art. V.

Gender identity means an individual's various attributes as they are understood to be masculine or feminine and shall be broadly interpreted to include pre and post operative gender individuals, as well as other persons who are or are perceived to be transgendered*;* as well as gender expression, including external characteristics and behaviors that are socially defined as either masculine or feminine.

Place of public accommodation means facilities, establishments, accommodations, services, commodities, or use offered to or for use by the general public, including public places where food or beverages are offered for sale, public places operated for temporary lodging, use or accommodation of those seeking health or recreation and all establishments offering such goods or facilities, and entities soliciting patronage from the general public, except for religious organizations or expressive associations whose inclusion of a person protected by this article would significantly burden the association's rights of expressive association. This does not include any private club or any place which is in its nature distinctly private.

Social club means an organization composed of people who voluntarily meet on a regular basis for a mutual purpose other than for educational, religious, charitable, or financial pursuits. This includes any group that has members who meet for a social, literary, or political purpose. This definition does not include any club conducted for the purpose of evading this article.

Sexual orientation means an enduring pattern of emotional, romantic, or sexual attractions to men, women, or both sexes as well as the genders that accompany them, including the perception or status of an individual's same-sex, opposite-sex, or bisexual orientation.

Vendor means a person or firm in the business of selling or otherwise providing products, materials or services.

Cross reference-Procurement, Ch. 26A.

(Ord. No. O2014.10, 2-27-14)

Sec. 2-601. Policy.

It is declared to be the policy for the citizens of Tempe, Arizona, to be free from discrimination in public accommodations, employment, and housing, and contrary to public policy and unlawful to discriminate against any person on the basis of race, color, gender, gender

identity, sexual orientation, religion, national origin, familial status, age, disability, or United States military veteran status, in places of public accommodation, employment, and housing; and contrary to the policy of the city and unlawful for vendors and contractors doing business with the city to discriminate, as set forth in this article.
(Ord. No. O2014.10, 2-27-14)

Sec. 2-602. Administrative provisions.

(a) *Powers and duties*. Administration, authority and responsibility for administering this article shall rest with the city manager.

(1) The city manager or designee may delegate functions, duties and responsibilities for investigation, mediation, and conciliation and may otherwise act to assist the city in the administration of this article;

(2) The city manager or designee shall administer programs and activities as authorized herein to further the purposes of this article, in compliance with federal, state and local laws, and shall work with and enter into agreements as approved by the city council, with the United States Equal Employment Opportunity Commission, the United States Department of Housing and Urban Development, and other agencies of the United States or State of Arizona that govern or affect discriminatory practices as defined by this article, including the acceptance of funds from such agencies and the carrying out of such covenants and conditions of such agreements, in compliance with this article; and

(3) The city manager or designee shall cooperate with and render assistance to, as reasonably requested, other public or private agencies, organizations and entities, to formulate or carry out programs to further the prevention or elimination of discriminatory practices as defined in this article.

(b) The city attorney shall be authorized to take such actions as authorized herein to carry out the duties as set forth in this article.
(Ord. No. O2014.10, 2-27-14)

Sec. 2-603. Unlawful practices.

The following shall constitute a violation of this article:

(1) For any owner, operator, lessor, manager, agent or employer of any place of public accommodation to discriminate against any person, including to restrict or refuse access on the basis of race, color, gender, gender identity, sexual orientation, religion, national origin, familial status, age, disability, or United States military veteran status;

(2) For an employer, because of race, color, gender, gender identity, sexual orientation, religion, national origin, familial status, age, disability, or United States military veteran status, to refuse to hire or employ or bar or discharge

from employment any person, or to discriminate against such person in compensation, conditions, or privileges of employment;

(3) For a labor organization, because of race, color, gender, gender identity, sexual orientation, religion, national origin, familial status, age, disability, or United States military veteran status, to exclude, expel, limit or restrict from its membership any person, or to provide segregated membership or otherwise discriminate in any manner against any of its members, applicants or employers;

(4) For any owner or lessor to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities therewith, because of race, color, gender, gender identity, sexual orientation, religion, national origin, familial status, age, disability, or United States military veteran status;

(5) For a city vendor or city contractor, because of race, color, gender, gender identity, sexual orientation, religion, national origin, familial status, age, disability, or United States military veteran status, to refuse to hire or employ or bar or discharge from employment any person, or to discriminate against such person in compensation, conditions, or privileges of employment. City vendors and contractors shall provide a copy of its antidiscrimination policy to the city's procurement officer, to confirm compliance with this article or attest in writing to compliance with this article; or

(6) For any person to coerce, intimidate, threaten, or interfere with any person in the exercise and enjoyment of, or on account of any aid or encouragement of any right granted or protected under this article.

(Ord. No. O2014.10, 2-27-14)

Sec. 2-604. Exclusions.

This article shall not apply to:

(1) A religious organization;

(2) An expressive organization whose employment of a person protected by this article would significantly burden the association's rights of expressive association;

(3) A bona fide membership club (other than a labor organization) that is exempt from taxation under the Internal Revenue Code of 1986 (as amended from time to time), as defined in this article; or

(4) A social club, as defined in this article.

(Ord. No. O2014.10, 2-27-14)

Sec. 2-605. Fair housing.

(a) It shall constitute a violation of this article to refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of residential real property to any person because of race, color, gender, gender identity, sexual orientation, religion, national origin, familial status, age, disability, or united states military veteran status, within the legal jurisdiction of the city.

(b) It shall constitute a violation of this article to refuse any provision of services or facilities, privileges or conditions of the sale or rental of residential real property to any person because of race, color, gender, gender identity, sexual orientation, religion, national origin, familial status, age, disability, or united states military veteran status, within the legal jurisdiction of the city.

(c) Nothing in this article shall exclude or deny housing designated for senior living or for the disabled, or as otherwise designated or directed by the united states department of housing and urban development or the State of Arizona.
(Ord. No. O2014.10, 2-27-14)

Sec. 2-606. Penalties, process and appeals.

(a) Any person found responsible of violating any section or subsection of this article shall be punished by the imposition of a civil sanction of a fine of one thousand five hundred dollars ($1,500) and not more than two thousand five hundred dollars ($2,500) plus applicable surcharges, for each violation.

(b) Any person claiming to be aggrieved of a violation of this article may file with the city manager or his designee of the city, a written charge signed by the complainant and verified by such signature, within forty-five (45) days of the alleged violation occurring. The charge shall set forth facts upon which it is based and shall identify the person charged (hereinafter "respondent"). The city manager or designee shall furnish the respondent with a copy of the charge and shall promptly investigate the allegations of the discriminatory practices set forth in the charge.

(c) The respondent may file, no later than twenty (20) days following receipt of the charge, a written verified answer to the charge. Failure to answer or participate in the process will be considered an admission.

(d) The city manager or designee shall render written findings as to whether there may be reasonable cause to substantiate the charge no later than one hundred twenty (120) days from the filing of the charge. The city manager or designee shall furnish a copy of its report of findings to the charging party and to the respondent.

(e) If the city manager or designee finds that there is reasonable cause to believe that the respondent has engaged in a discriminatory practice that is prohibited by this article, the city manager or designee may attempt to eliminate the alleged discriminatory practice by conference, conciliation, and discussion. The terms of any agreement between the parties may require the

respondent to refrain from or engage in certain actions to carry out the purposes of this article in the future. If an agreement is reached, the city manager or designee shall issue an order stating the terms of the agreement and furnish a copy to each party.

(f) No actions or omissions undertaken pursuant to this article, shall give rise to liability or legal responsibility on the part of the city or any of its employees, agents or officials.

(g) In connection with the investigation of any charge filed under this article, the city manager or designee shall seek the voluntary cooperation of any person to: obtain access to premises, records, documents, individuals and other possible sources of information; examine, record and copy any materials; and take and record testimony and obtain statements as reasonably necessary to further the investigation.

(h) Charges may be dismissed for reasons including: the complaint was untimely filed; the location of the alleged practice was outside of the city's jurisdiction; insufficient evidence exists to conclude that the violation occurred; or a conciliation agreement has been executed by the parties.

(i) If upon completion of the investigation, the city manager or designee has concluded that a violation of this article occurred, but is unable to obtain a conciliation agreement, refer the charge to an appropriate federal or state agency, or otherwise dispose of the violation, it shall impose a fine of one thousand five hundred dollars ($1,500) per civil violation. A person found responsible for the same civil infraction shall be fined no more than two thousand five hundred dollars ($2,500). In addition, the city manager or designee may refer the matter to the city attorney's office, who shall determine how best to pursue further action, if any, on the violation.

(j) The city attorney's office will determine whether sufficient facts and evidence exist in order to warrant the initiation of an action in a court of competent jurisdiction. If the city attorney's office determines that the facts or evidence are insufficient to warrant the initiation of an action, the city attorney will provide written notification to the parties, and the charge will be dismissed.

(k) Failure to remit payment of a fine imposed under this article shall result in collection efforts as any other civil judgment.
(Ord. No. O2014.10, 2-27-14)

Sec. 2-607. Severability and legal effect.

(a) Nothing contained in this article shall be deemed or interpreted to alter, contravene, or supersede state or federal laws, including privacy laws.

(b) Nothing in this article shall be deemed to confer rights or benefits in addition to what is described herein.

(c) Nothing in this article shall be construed to give rise to civil or legal liabilities greater than those already existing under law or to create private causes of action, other than to be remedied as set forth herein.

(d) If any provision, section or subsection of this article is held to be invalid by a court of competent jurisdiction, then such provision, section or subsection shall be considered separately and apart from the remaining provisions or sections, which shall remain in full force and effect. (Ord. No. O2014.10, 2-27-14)

Sec. 2-608. Appeals.

The following is the process for appeals of any action under this article:

(1) If either party is dissatisfied with the findings of a violation under this article, the party may administratively appeal the decision to the city manager or designee, within five (5) days of receipt of the findings. The city manager or designee shall render a decision within ten (10) working days of the receipt of request for review;

(2) If any fines are levied pursuant to this article, the party may appeal the decision and resulting fine in writing to the city manager within five (5) working days of the receipt of the imposition of the fine. Such appeal shall contain the factual basis for the party's position and the reasons why the decision is incorrect and should be overturned;

(3) If either party is dissatisfied with the administrative review by the city manager, the party may file an appeal in writing with the city clerk to be heard by a hearing officer. Such appeal shall be filed within ten (10) days of the receipt of a decision by the city manager, setting forth the reasons why the decision is incorrect and should be overturned;

(4) The hearing officer shall consider all facts relating to the issuance of the charge and resulting fine, if any, and may uphold the penalty imposed, eliminate it or modify it;

(5) The costs of the administrative hearing may be assessed to the responsible party in addition to any other fines and penalties, in the event the charge is upheld; and

(6) If either party is dissatisfied with the review by the hearing officer, the party may file an appeal in writing with the city clerk to be heard by the city council. Such appeal shall be filed within ten (10) days of the receipt of a decision by the hearing officer, setting forth the reasons why the decision is incorrect and should be overturned. The decision of the city council shall constitute the final decision.

(Ord. No. O2014.10, 2-27-14)

Sec. 2-609. Public records.

All documents provided to the city pursuant to this article are public records pursuant to the laws of the State of Arizona and may be subject to disclosure upon request in accordance with the laws of the State of Arizona.
(Ord. No. O2014.10, 2-27-14)

Secs. 2-610—2-624. Reserved.

Chapter 3

ADVERTISING AND SIGNS[1]

ARTICLE I. IN GENERAL

Secs. 3-1—3-15. Reserved.

ARTICLE II. HANDBILLS

Sec. 3-16. Definitions.

(a) For the purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section:

(b) *Commercial handbill* means any printed or written matter, any sample or device, dodger, circular, leaflet, pamphlet, paper, booklet or any other printed or otherwise reproduced original or copies of any matter or literature:

(1) Which advertises for sale any merchandise, product, commodity or thing;

(2) Which directs attention to any business or mercantile or commercial establishment, or other activity, for the purpose of either directly or indirectly promoting the interests thereof by sales;

(3) Which directs attention to or advertises any meeting, theatrical performance, exhibition or event of any kind for which an admission fee is charged for the purpose of private gain or profit; but the terms of this clause shall not apply where an admission fee is charged or a collection is taken up for the purpose of defraying the expenses incident to such meeting, theatrical performance, exhibition or event of any kind, when either of the same is held, given or takes place in connection with the dissemination of information which is not restricted under the ordinary rules of public peace, safety and good order, provided that nothing contained in this clause shall be deemed to authorize the holding, giving or taking place of any meeting, theatrical performance, exhibition or event of any kind without a license, where such license is or may be required by any law of this state, or under this Code or any other ordinance of this city;

(4) Which, while containing reading matter other than advertising matter, is predominantly and essentially an advertisement, and is distributed or circulated for advertising purposes or for the private benefit and gain of any person so engaged as advertiser or distributor;

(5) Which is not covered by the definition of sign.

(c) *Newspaper* means any newspaper of general circulation, as defined by general law, any newspaper duly entered with the Post Office Department of the United States in accordance with federal statute or regulation, and any newspaper filed and recorded with any recording officer as provided by general law, and, in addition thereto, any periodical or current magazine regularly published with not less than four (4) issues per year and sold to the public.

(d) *Noncommercial handbill* means any printed or written matter, any sample or device, dodger, circular, leaflet, pamphlet, newspaper, magazine, paper booklet or any other printed or otherwise reproduced original or copies of any matter or literature not included in the definitions of a sign or a commercial handbill or a newspaper.

(e) *Private premises* means any dwelling, house, building or other structure designed or used either wholly or in part for private purposes, whether inhabited or temporarily or continuously uninhabited or vacant, including any yard, grounds, walk, driveway, porch, steps, vestibule or mailbox belonging or appurtenant to such dwelling, house, building or other structure.

(f) *Public place* means any street, boulevard, avenue, lane, alley or other public way, and all public parks, squares, spaces, plazas, grounds and buildings.
(Code 1967, § 3-1)

Sec. 3-17. Posting prohibited in certain places.

No person shall post, stick, stamp, paint or otherwise fix or cause the same to be done by any person, any notice, placard, bill, card, poster, advertisement or other paper or device calculated to attract the attention of the public to or upon any sidewalk, crosswalk, curb or curbstone, flagstone or any other portion or part of any public way or public place, or any lamppost, electric light, telegraph, telephone or trolley line pole, or railway structure, hydrant, shade tree or tree-box, or upon the piers, columns, trusses, girders, railings, gates or other parts of any public bridge or viaduct, or other public structure or building, or upon any pole, box or fixture of the fire alarm or police telegraph system, except such as may be authorized or required by the laws of the United States, the state and this code or any other ordinances of the city.

Any business or mercantile or commercial establishment whose commercial handbills are in violation of this section shall be prima facie responsible for such violation and subject to penalty therefor.
(Code 1967, § 3-2; Ord. No. 86.12, 3-20-86)

Sec. 3-18. Depositing commercial handbills in public places.

No person shall deposit, place, throw, scatter or cast any commercial handbill in or upon any public place within this city.
(Code 1967, § 3-3)

Sec. 3-19. Manner of placing in or upon vehicles.

No person shall distribute, deposit, place, throw, scatter or cast any commercial or noncommercial handbill in or upon any automobile or other vehicle in a manner in which it is likely to be carried or deposited by the elements upon any adjoining premises, street or sidewalk or other private place, or upon private property. The provisions of this section shall not prohibit the handing, transmitting or distributing of any noncommercial handbill to the owner or other occupant of any automobile or other vehicle who is willing to accept the same.
(Code 1967, § 3-4)

Sec. 3-20. Depositing on vacant premises.

No person shall throw or deposit any commercial or noncommercial handbill in or upon any private premises which are temporarily or continuously uninhabited or vacant in any of the following circumstances:

(a) Where it is apparent that such property is unoccupied;

(b) Where it is apparent that a previous day's distribution of handbills has not been removed;

(c) Where the owner has not given his permission to do so.
(Code 1967, § 3-5)

Sec. 3-21. Distributing, etc., on posted premises.

No person shall distribute, deposit, place, throw, scatter or cast any commercial or noncommercial handbill upon any premises if requested by anyone thereon not to do so, or if there is placed on such premises, in a conspicuous position near the entrance thereof, a sign bearing the words "No Trespassing", "No Peddlers or Agents", "No Advertisement", "No Unsolicited Newspapers" or any similar notice indicating in any manner that the occupants of such premises do not desire to be molested or to have their right of privacy disturbed, or to have any such handbills left upon such premises.
(Code 1967, § 3-6)

Sec. 3-22. Manner of distribution on private premises.

No person shall distribute, deposit, place, throw, scatter or cast any commercial or noncommercial handbill in or upon any private premises which are inhabited, except by handing or transmitting any such handbill directly to the owner, occupant or any other person then present in or upon such private premises; provided that in case of inhabited private premises which are not posted as provided in this chapter, such licensed or other person, unless requested by anyone upon such premises not to do so, may place or deposit any such handbill in or upon such inhabited private premises, if such handbill is so placed or deposited as to secure or prevent such handbill from being blown or drifted about such premises or elsewhere, except that mailboxes may not be so used when so prohibited by federal postal laws or regulations.
(Code 1967, § 3-7)

Sec. 3-23. Certain subject matter not to be posted.

No owner, lessee, occupant or agent of any premises shall permit any person, whether licensed or acting under the terms of this article or otherwise, to post, affix or otherwise attach to any building, structure or fixture located upon such premises, whether such fixture is natural or artificial, any poster or handbill containing any matter prohibited by the terms of this article.
(Code 1967, § 3-9)

Secs. 3-24—3-35. Reserved.

Secs. 3-36—3-43. Repealed.
(Ord. No. 93.13, 4-8-93)

Chapter 4

ALCOHOLIC BEVERAGES[1]

Sec. 4-1. Definitions.

For the purposes of this chapter, unless the context otherwise requires, all words and phrases shall have the same meaning attributed to them as is provided in Arizona Revised Statutes, § 4-101 et seq.
(Code 1967, § 4-1)

Sec. 4-2. License required.

No person shall manufacture, sell or deal in spirituous liquors within the city without first obtaining and properly maintaining in force a liquor license issued by the state under the procedures specified by state law and/or state regulation promulgated under state law.
(Code 1967, § 4-2)

Sec. 4-3. City liquor license—Application procedure.

(a) Under the provisions of Arizona Revised Statutes, § 4-201, the city is required to post the premises for any proposed original liquor license or transfer of a liquor license at any location in the city, and the city council is required to recommend to the state liquor board approval or disapproval of the issuance of such state license. To satisfy these requirements, the following procedures are hereby established:

(1) When copies of state applications or applicant's questionnaires are received by the city clerk or by the internal services department, acting as designated agent of the city clerk, the applicant shall be promptly notified of required city procedures and fees;

(2) The applicant shall complete and return to the city a liquor license application form to provide such information as may be deemed necessary by the city clerk to help various departments and agencies provide appropriate information or recommendations on the matter to the city council. Each application shall bear the notarized signature of the applicant or his agent authorized under state law. At the time the city application is submitted, a nonrefundable application fee shall also be paid (see Appendix A). Arrangements shall be made to post the premises for twenty (20) days as required by state law;

(3) The applicants and agents, in addition to state law requirements, shall submit a full set of fingerprints to the Tempe police department for the purpose of obtaining a state or federal, or both, criminal records check pursuant to A.R.S. § 41-1750 and Public Law (PL) 92-544. The Department of Public Safety is

[1]**Cross references**—Licenses, taxation and miscellaneous business regulations, Ch. 16; consumption of alcoholic beverages in parks, § 23-45.

State law reference—Alcoholic beverages, A.R.S. § 4-101 et seq.

authorized to exchange this fingerprint data with the Federal Bureau of Investigation. Fingerprints must be submitted on fingerprint cards provided by the finance and technology director or designee;

(4) The internal services department, as designated agent of the city clerk, shall submit recommendation requests to the police department, fire marshal, community development department, county health services department and/or to any other agency which might provide pertinent information to the city council. If there are apparent violations of the zoning code, building code, fire code, or health code, the applicant shall be expected to take corrective action and to call the appropriate agency for reinspection of the premises. When all recommendation sheets have been returned to the internal services department, and when it is determined that neither the applicant nor his immediate predecessor in the establishment is delinquent in reporting and/or paying any required city tax or fee, the matter of the liquor license application shall be submitted to the city council for action at a subsequent council meeting;

(5) After a public hearing the city council shall recommend to the state liquor board approval or disapproval of the proposed liquor license based on whether such issuance will best serve the public interest and convenience of the city. In making such determination the council may consider all factors deemed by it to be relevant; and

(6) The city clerk shall promptly send to the state liquor board certification of approval or disapproval by the city council, together with any petitions or letters submitted to the city clerk during the twenty (20) day posting period.

(b) No person shall fail or refuse to file a city liquor license application or fail or refuse to comply with other procedural requirements as specified in subsection (a) of this section within fifteen (15) days after a notice or letter requesting compliance is sent to the establishment or to the mailing address shown on state application forms by ordinary mail.
(Code 1967, §§ 4-3, 4-9; Ord. No. 90.24, 7-12-90; Ord. No. 97.20, 4-10-97; Ord. No. 2001.17, 7-26-01; Ord. No. 2002.23, 8-1-02; Ord. No. 2010.02, 2-4-10; Ord. No. O2014.27, 6-26-14)

Sec. 4-4. Same—Tax; issuance fee; penalty for late payment.

(a) Whenever the state issues a liquor license for a location within the city, such licensee shall be subject to, and shall pay, a first-year issuance fee of two hundred dollars ($200), together with the city liquor license tax as hereinafter provided. The city liquor license tax shall continue to be applicable, whether or not the liquor license is in active use, until the department of liquor licenses and control has cancelled such liquor license for the stated location. In the case of a pending transfer of a license, or the operation of a restaurant or hotel-motel liquor license under an interim permit issued by the state, the applicant shall maintain payment of the city license tax when due during the period prior to the actual issuance of a new liquor license by the state.

(b) The tax shall be imposed on an annual basis, and shall be due and payable in full on or before the first day of January each year.

(c) The city liquor license tax for each continuing license and for each new license issued on or prior to June 30 in any calendar year for each license series issued by the state shall be imposed in accordance with the tax schedule shown in Appendix A. If any establishment maintains more than one series of liquor license for the establishment, a separate city liquor license tax shall be imposed for each series of state liquor license maintained.

(d) For any new state liquor license issued by the state on or after July 1 of any calendar year, the liquor license tax shown in Appendix A shall be imposed.

(e) For any new state liquor license issued by the state, the tax imposed by this chapter shall be submitted at the time of making city application and refunded if the state liquor license is not issued.

(f) Any person subject to tax under this chapter who fails to pay the first-year issuance fee and/or city liquor license tax when same becomes due shall be subject to and shall pay a penalty of one hundred dollars ($100) or fifteen percent (15%) of the past due amount, whichever is greater, plus one percent interest per month of taxes and/or fees due.

(g) The first-year issuance fee shall be submitted at the time of making city application and refunded if the state liquor license is not issued.

(h) No person shall fail or refuse to pay a delinquent city liquor license tax within fifteen (15) days after a compliance request is mailed to the establishment or to the last known mailing address of the license holder by ordinary mail.

(i) No person shall fail or refuse to pay any penalty assessed for late payment within fifteen (15) days after notice of such penalty charge is mailed to the establishment or to the last known mailing address of the license holder by ordinary mail.
(Code 1967, §§ 4-4, 4-9(a), (b); Ord. No. 90.24, 7-12-90)

Sec. 4-5. Tax rate schedules.

The city's liquor license tax for each license established by the State of Arizona shall be imposed by the city council (see Appendix A).
(Ord. No. 391.3, § I, 8-16-84; Ord. No. 86.77, 1-29-87; Ord. No. 90.24, 7-12-90)

State law reference—Authority of city to levy a tax on the privilege of engaging in the business of selling spirituous liquors at retail, A.R.S. § 4-223.

Sec. 4-6. Special event licenses.

(a) Any person desiring a special event license, pursuant to Arizona Revised Statutes § 4-203.02, shall make application to the internal services department not less than sixty (60) days prior to the date for which such special event license is sought.

(b) Application shall be made upon forms prescribed by the finance and technology director, which shall provide sufficient information to enable the city council to determine the applicant's qualifications for such license as provided for in state law. Each such application shall contain a notarized signature of the applicant and shall be accompanied by a nonrefundable application fee (see Appendix A).

(c) The city council shall hold a public hearing on the application and transmit to the department of liquor licenses and control its recommendation within forty-five (45) days of receipt of the application.

(d) Each special event license granted by the state shall be subject to a city special event license tax of twenty-five dollars ($25) for each day in which the license is in effect. The special event license tax shall be submitted at the time of making application and is refundable if the state license is not issued.
(Code 1967, § 4-10; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Sec. 4-7. Compliance with other city laws required.

Issuance of a liquor license by the state department of liquor licenses and control shall not exempt the license holder from complying with all city laws, including but not limited to tax laws, licensing laws, zoning code, building code and fire code. If any or all of such laws are deliberately violated by the liquor license holder, the city or any of its departments may petition the department of liquor licenses and control to request cancellation of such liquor license.
(Code 1967, § 4-7)

Sec. 4-8. Right of entry of enforcement officials.

(a) Any member of the police force of the city, or any other officer or official of the city, shall have the right to enter for inspection purposes during normal business hours any establishment in the city for which a liquor license has been issued by the state.

(b) No person shall fail or refuse to permit a police officer of the city, or any officer or official of the city showing appropriate city identification, to enter the licensed establishment for inspection purposes during business hours.
(Code 1967, §§ 4-8, 4-9)

Sec. 4-9. Weapons prohibited in establishment.

(a) This section shall be known and may be cited as the "Weapons Control Ordinance of the city."

(b) For the purposes of this section, the following words and phrases shall have the meanings respectively ascribed to them in this subsection, unless the text clearly indicates otherwise:

(1) *Person* means any person except members of any law enforcement unit, private police employed by the licensee, the licensee of the premises, and employees and agents.

(2) *Weapon* includes, but is not limited to, any type of firearms or instrument capable of projecting a missile; any type of knife, dagger, sword or other sharp instrument used in combat; any chain, motorcycle driving chains, belts composed of such chains, brass knuckles, sap, or other blunt instrument not manifestly appropriate for lawful use; and any type of explosive or explosive instrument whatsoever.

(c) It is a misdemeanor for any person to carry any weapon, whether concealed or not, into any place within the city limits where spirituous liquor, as defined in Arizona Revised Statutes § 4-101(15), is sold or dispensed.

Editor's note—Effective September 29, 2010, all language prohibiting knives, daggers, swords or other sharp instruments in establishments were spirituous liquor is served has been made null and void pursuant to A.R.S. § 13-3120.

(d) No licensee nor any employee or agent of any establishment where spirituous liquor is sold or dispensed shall allow any person to carry onto his premises any weapon in violation of subsection (c). Violation of this subsection shall be a misdemeanor. Nothing in this section shall be construed to prohibit any owner of any establishment where spirituous liquor is sold or dispensed from keeping on his premises a weapon for the purpose of protecting the establishment.

(e) Nothing in this section shall be construed as limiting or otherwise altering the requirements of any other applicable laws respecting the carrying or possession of weapons.
(Code 1967, §§ 21-41—21-44)

Chapter 5

AMUSEMENTS[1]

ARTICLE I. IN GENERAL

Sec. 5-1. Machines and devices; license tax.

(a) There is hereby levied and shall be collected a license tax upon every person owning or operating a music device or amusement device, that is card-operated, coin-operated or otherwise electronically operated, when such music device or amusement device is within the city and available for use in any place of business (see Appendix A), prorated on a quarterly basis if issued during the year. This license tax is not refundable and can not be transferred to another device. This license tax is in addition to all other taxes which may be separately levied by the city.

(b) Any antique device, as hereinafter defined, shall be exempted. An "antique music or amusement device" shall be defined as such a device manufactured more than fifty (50) years prior to the calendar year for which the license tax is to be collected and activated by a coin of five cents ($0.05) or smaller in denomination.

(c) The license tax provided in this section shall be due and payable immediately upon the first day of January each year or immediately when such taxable device is placed at a business establishment within the city. The license tax shall be delinquent five (5) days after it becomes due and thereafter shall require payment of an additional twenty percent (20%) penalty per month before the required license is issued. No such license shall be issued until all previous taxes and penalties have been paid. All payments shall be made to the finance and technology director or his authorized representative.

(d) The finance and technology director or any of his authorized agents and any police officer of the city shall have the right to inspect any premises and device for valid licenses. It shall be unlawful to have a device subject to this license available for use at any place of business within the city unless a valid license is affixed to the device. Both the owner of the taxable device and the owner of the business upon whose premises such device is located within the city shall be guilty of a separate misdemeanor for each day the taxable device is there located without a valid license.
(Code 1967, § 5-1; Ord. No. 87.49, § 1, 10-22-87; Ord. No. 97.22, 4-24-97; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Sec. 5-2. Temporary special events or activities; permit.

(a) In addition to any other permits, licenses, taxes or requirements imposed by this code, the following temporary special events or activities shall be required to obtain a permit before carrying on such activity within the city:

[1]**Cross references**—Licenses, taxation and miscellaneous business regulations, Ch. 16.

(1) Any outdoor public gathering or celebration involving the use of city owned properties that involve but are not limited to any of the following:

a. Entertainment;

b. Dancing;

c. Music;

d. Dramatic productions;

e. Athletic tournaments;

f. Amusements, festivals or carnivals;

g. Sale of merchandise, food or alcohol, including sidewalk sales;

h. Parades, walks, bicycle rides or runs; or

i. Any temporary extension of premises of an existing use.

(2) Any activity taking place on private or city owned property which requires a state issued temporary extension of liquor licensed premises or a special event liquor license;

(3) Any activity taking place on private or city owned property, which may require for its successful execution city services to a degree significantly over and above that routinely provided under ordinary circumstances; and

(4) Any activity taking place on city or privately owned property used as a public gathering place that involves a substantial deviation from the current land use designation or legal nonconforming use.

(b) Parades, runs, walks, bicycle rides, or other similar events which will use or may impact city streets or rights-of-way will be required to comply with the provisions of § 19-43 of the Tempe City Code.

(c) The promoter or sponsoring organization, or their authorized agent, shall apply to the city manager or his authorized representative at least sixty (60) days in advance of the scheduled starting date of the event or activity. At the time of the application, the promoter or sponsoring organization shall pay a non-refundable application fee (see Appendix A). Late applications will be accepted at an additional fee (see Appendix A). If the event is cancelled by the promoter, the application fee shall not be refunded to the applicant. Once the event or activity is approved and permitted within the city, the promoter or sponsoring organization shall pay a permit fee for each day of operation of the event or activity (see Appendix A). The permit fee shall not exceed a maximum of five (5) days per event.

(d) The city manager or his authorized representative shall send copies of applications and other pertinent material to other city departments which could be affected by the proposed special event or activity. Such departments may recommend to the city manager or his authorized representative that the permit be issued only after the applicant has met, at his own cost, certain stipulations including but not limited to any of the following:

(1) Hiring a stated number of security personnel;

(2) Erecting security fencing or approved security barriers;

(3) Providing sanitary facilities;

(4) If restricted parking areas as defined in § 19-93 of this code are temporarily used for a purpose other than accessible parking, providing adequate alternative accessible parking for the duration of the special event;

(5) Agreeing to pay for any anticipated or unforeseen costs associated with the special event, including posting a performance bond if requested by the city;

(6) Applying for and receiving all other necessary permits and approvals; or

(7) Taking other measures to provide for fire protection or the health, safety and welfare of the public.

Issuance of the permit may be made contingent upon meeting any or all of these recommended stipulations.

(e) The permit fee may be refunded by the city manager or his authorized representative if the proposed event is sponsored by a nonprofit charitable, educational or civic service organization and providing that the city manager or his authorized representative can determine to his own satisfaction that the net proceeds accruing to the sponsoring organization will be directed to a charitable purpose directly benefiting residents of the city. Requests for a refund must be made in writing at the time of the permit application. If the stipulated allocation of proceeds is not carried out within sixty (60) days after the final performance, the permit fee shall not be refunded. The amount of the refund shall be offset as described in subsection (c).

(f) The city manager or his authorized representative shall, after obtaining recommendations from the various departments, authorize issuance of the permit with or without stipulations or shall refuse to issue the permit if, on the basis of reports received, it appears that the intended activity would be detrimental to the health, safety or welfare of either the general public or of nearby residents or owners of nearby property or place an undue burden on city services. If the applicant disagrees with the decision of the city manager or his authorized representative, he shall promptly file with the city clerk a request for reconsideration by the city council at the next meeting which occurs fifteen (15) days or more after the request is made.

(g) If issuance of the permit is authorized pursuant to section (f) above, the permit shall not actually be issued until all applicable city code and state statutory requirements have been met, and all city and state permits have been obtained; until both the promoter or sponsoring organization have signed applications agreeing to indemnify and to hold harmless the city from and against any

and all losses, claims or actions resulting from the activities of the applicant or of the applicant's employees, principals or agents; and until the organization directly responsible for the special event or activity has provided satisfactory evidence of suitable personal injury and property damage insurance or other such insurance as deemed necessary by the city.

(h) The city manager or his authorized representative may revoke a special event permit if the permittee fails to abide by any of the conditions of the permit or any of the provisions of this section. Violations of this section are punishable as set forth in § 1-7, Tempe City Code.
(Code 1967, § 5-2; Ord. No. 2000.48, 11-2-00; Ord. No. 2012.03, 1-19-12)

Sec. 5-3. Fortunetellers, etc.; license.

(a) Every palmist, astrologer, clairvoyant, fortuneteller, soothsayer or any person wishing to conduct a similar activity shall obtain a license from the finance and technology director or designee before carrying on such activity within the city. In addition, these activities are specifically declared to be an amusement subject to tax and license requirements established by chapter 16 of this code.

(b) Any applicant desiring to obtain a license shall make application to the finance and technology director or designee. All information required for any license application is deemed necessary in order to conduct a complete background investigation. It shall be unlawful to provide false information on any application. The application shall be accompanied by an application fee, a license fee, a fingerprinting fee and a photographing fee as established by the city council (see Appendix A). All fees are nonrefundable.

(c) Each applicant shall be required to have two (2) satisfactory full-face identification photographs taken by the city.

(d) The applicant shall submit a full set of fingerprints to the Tempe police department for the purpose of obtaining a state or federal, or both, criminal records check pursuant to A.R.S. § 41-1750 and Public Law (PL) 92-544. The Department of Public Safety is authorized to exchange this fingerprint data with the Federal Bureau of Investigation. Fingerprints must be submitted on fingerprint cards provided by the finance and technology director or designee.

(e) All applicants must be approved by the chief of police or designee before carrying on any activities regulated by this section. The chief of police or designee shall approve or disapprove each application within forty-five (45) days after it is filed. Approval shall not be given if there is any evidence of a conviction for a felony or for any misdemeanor involving moral turpitude.

(f) License shall be valid only for the calendar year in which it is issued. Any license may be renewed by filing a renewal application for approval and paying the renewal fee as established by the city council (see Appendix A) before the first day of the year in which they wish to be licensed. Any license renewal application or fee received on or after the first day of the year will be subject to a late renewal penalty as established by the city council (see Appendix A). Licenses are not transferable.

(g) Failure of a licensee to timely renew their license for the current year will result in the licensee applying for a new license and paying all applicable fees.

(h) A licensee must operate their business in a permanent structure that meets building code, fire code and zoning code requirements.

(i) A licensee who desires to change their business location shall notify the city in writing at least thirty (30) days in advance of such intention and pay a relocation fee as established by council (see Appendix A). No business shall be conducted until the appropriate city departments have stated in writing that building code, fire code and zoning code requirements have been met at the new business location.

(j) Licenses issued under this section will be revoked if at any time there is evidence of a felony conviction or of a misdemeanor involving moral turpitude or a violation of this code section or a violation of other city codes. Notification of revocation of this license will be by certified mail to the last known address of the licensee.
(Code 1967, § 5-2.1; Ord. No. 2001.17, 7-26-01; Ord. No. 2002.24, 8-1-02; Ord. No. 2010.02, 2-4-10)

Sec. 5-4. Clothing of entertainers in restaurants, nightclubs, etc.

(a) Any person entertaining or performing any dance or in any play, exhibition, show or other entertainment or any female serving food or spirituous liquors as defined by title 4, chapter 1, article 1, Arizona Revised Statutes, as amended, or in any public place, who appears clothed, costumed, unclothed or uncostumed in such a manner that the areola (the more darkly pigmented portion of the breast encircling the nipple) is not covered by a brassiere consisting of a fully opaque fabric material or is so thinly covered as to appear uncovered is guilty of a misdemeanor.

(b) A person who knowingly conducts, maintains, owns, manages, operates or furnishes any restaurant, nightclub, bar, cabaret, tavern, tap room, theater or any place serving food or spirituous liquors, as defined by title 4, chapter 1, article 1, Arizona Revised Statutes, as amended, or a private, fraternal, social, golf or country club, as defined by title 4, chapter 1, article 1, Arizona Revised Statutes, as amended, or any public place, where a female appears clothed, costumed, unclothed or uncostumed in such a manner that the areola (the more darkly pigmented portion of the breast encircling the nipple) is not covered by a brassiere consisting of a fully opaque fabric material or is so thinly covered as to appear uncovered is guilty of a misdemeanor.

(c) Any person entertaining or performing any dance or in any play, exhibition, show or other entertainment, or any person serving food or spirituous liquors as defined by title 4, chapter 1, article 1, Arizona Revised Statutes, as amended, in a restaurant, nightclub, bar, cabaret, tavern, tap room, theater, or in a private, fraternal, social, golf or country club, as defined by title 4, chapter 1, article 1, Arizona Revised Statutes, as amended, or in any public place, who appears clothed, costumed, unclothed or uncostumed in such a manner that the lower part of his or her torso, consisting of the mons veneris and genitalia (the private parts) or anal cleft or cleavage of the buttocks, is not covered by a fully opaque fabric material or is so thinly covered as to appear uncovered is guilty of a misdemeanor.

(d) A person who knowingly conducts, maintains, owns, manages, operates or furnishes any restaurant, nightclub, bar, cabaret, tavern, tap room, theater or any place serving food or spirituous liquors, as defined by title 4, chapter 1, article 1, Arizona Revised Statutes, as amended, or a private, fraternal, social, golf or country club, as defined by title 4, chapter 1, article 1, Arizona Revised Statutes, as amended, or any public place where any person appears clothed, costumed, unclothed or uncostumed in such a manner that the lower part of his or her torso, consisting of the mons veneris and genitalia (the private parts), anal cleft or cleavage of the buttocks, is not covered by a fully opaque fabric material or is so thinly covered as to appear uncovered is guilty of a misdemeanor.
(Code 1967, § 5-3.1)

Secs. 5-5—5-20. Reserved.

ARTICLE II. BINGO[2]

Sec. 5-21. Definitions.

All words and phrases appearing in this article, unless the context requires otherwise, shall be given the meanings ascribed to them in Arizona Revised Statutes, §§ 5-401, 5-421.
(Code 1967, § 5-4)

Sec. 5-22. Licensing required.

No person shall operate or maintain a bingo game or small bingo game within this city without first obtaining and properly maintaining in force a bingo license issued by the state under the procedures specified in state law.
(Code 1967, § 5-5)

Sec. 5-23. License application procedure.

Pursuant to Arizona Revised Statutes, §§ 5-406, 5-423, applications for bingo and small bingo licenses are to be filed with this city for transmission to the state, and the city council is required to recommend approval or disapproval of the application for issuance of such license. To satisfy these requirements, the following procedures are hereby established:

(1) All applications shall be made upon forms approved by the licensing authority and shall be filed with the finance and technology director or his designated agent. The finance and technology director shall accept no application which does not contain all the information required by Arizona Revised Statutes, §§ 5-404, 5-423, as the case may be;

(2) In addition to such information and application fees as are required by Arizona Revised Statutes, §§ 5-404 or 5-423, each applicant shall submit with his application his prepaid bingo license tax payment as is hereinafter provided. Should any such application be denied by the state, the prepaid tax shall be promptly returned to the applicant by the finance and technology director;

(3) When the finance and technology director has received the required application, application fee and prepaid tax, he shall deem the application submitted and submit the application to the office of the city clerk, the community development department, the fire marshal and the county health services department;

(4) The city clerk shall schedule the application for public hearing at a subsequent council meeting at which all interested persons may give testimony. The community development department and the fire marshal shall submit to the city council their recommendations based upon the presence or absence of zoning, building, fire and health code violations; and

[2]**State law reference**—Games of bingo, A.R.S. § 5-401 et seq.

(5) Subsequent to public hearing, the city clerk shall promptly send to the licensing authority certification of approval or disapproval of the application by the city council together with any petitions or letters submitted to the city council relating to the application.

(Code 1967, § 5-6; Ord. No. 97.20, 4-10-97; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Sec. 5-24. License tax.

(a) Whenever the state has issued a bingo or small bingo license, a city bingo license tax shall become immediately applicable (see Appendix A).

(b) For new licenses, the license tax shall be due and payable at the time of application. For renewal licenses, the tax shall be due and payable on or before January 1 of the calendar year for which the license is renewed.

(c) Any tax payment for a renewal license made after January 1 of the calendar year for which the license was renewed shall be subject to a penalty (see Appendix A).

(d) It shall be unlawful for any licensee or any officer or agent of any licensee to:

(1) Fail or refuse to pay a delinquent city bingo license tax within ten (10) days after a compliance request is mailed to the premises or the last known address of the licensee; or

(2) Fail or refuse to pay any penalty assessed for late payment within ten (10) days after a notice of such penalty assessment is mailed to the premises or the last known address of the licensee.

(Code 1967, §§ 5-7, 5-8)

Sec. 5-25. Taxes cumulative.

The tax imposed by this article shall be in addition to such taxes imposed upon the privilege of maintaining a bingo business within the city pursuant to § 16-18 paragraph (12) of this code.

(Code 1967, § 5-9)

Secs. 5-26—5-29. Reserved.

ARTICLE III. NUISANCE PARTIES AND UNLAWFUL GATHERINGS

Sec. 5-30. Purpose.

(a) The city finds and determines that the control of nuisance parties on private property is necessary when such continued activity is determined to be a threat to the peace, health, safety or general welfare of the public. Often police response is required at a nuisance party in response to complaints in order to disperse uncooperative participants or enforce criminal laws. The response of police officers to a location constitutes a drain of personnel and resources which may leave other areas of the city without minimal levels of police protection, all of which creates a significant hazard to the safety of the police officers and to the public in general.

(b) The city finds and determines it is a public nuisance for any responsible person(s) or social hosts to permit, allow, or host an unlawful gathering at his or her place of residence (or other private real property under his or her ownership or control) where spirituous liquor is served to, or is in the possession of, or consumed by, any minor, or where illegal drugs are in the possession of, or consumed by, any person. When unlawful gatherings occur, the city finds and determines that early intervention through substance use education for the responsible person is desirable.
(Ord. No. 94.29, 12-8-94; Ord. No 2011.56, 11-3-11; Ord. No. 2013.30, 6-13-13)

Sec. 5-31. Definitions.

For the purpose of this article, the following terms shall have the meanings respectively ascribed to them herein unless the context requires otherwise:

(1) *Juvenile* means a minor under the age of eighteen (18) years.

(2) *Minor* means any person under the age of twenty-one (21) years.

(3) *Owner* means any owner, as well as an agent of an owner acting on behalf of the owner to control or otherwise regulate the occupancy of use of the property.

(4) *Premises* mean the property that is the site of a nuisance party or an unlawful gathering. For residential properties, a premise can mean the dwelling unit, units or other common areas where the nuisance party or the unlawful gathering occurs.

(5) *Nuisance party* means an assembly of persons for a social activity or for a special occasion in a manner which constitutes a substantial disturbance of the quiet enjoyment of private or public property. This includes, but is not limited to, excessive noise or traffic, obstruction of public streets by crowds or vehicles, public drunkenness, the service of alcohol to minors, fights, disturbances of the peace and litter.

(6) *Police service fee* means the fee as shown by a schedule adopted by the city council with the recommendation of the police chief to offset the cost of services provided by the police department in response to the nuisance party or unlawful gathering.

(7) *Responsible person* means any persons in attendance including any owner, occupant, tenant, or tenant's guest or any sponsor, host or organizer of the social activity or special occasion constituting the nuisance party or unlawful gathering. If such a person is a juvenile, the term "responsible person" includes, in addition to the juvenile, the juvenile's parents or guardians. Responsible person does not include owners or persons in charge of premises where an unlawful gathering or nuisance party takes place if the persons in attendance obtained use of the property through illegal entry or trespassing.

(8) *Special security assignment* means the police services provided during any call in response to complaints or other information regarding nuisance party or unlawful gatherings.

(9) *Spirituous liquor* shall have the same meaning as defined in A.R.S. §4-101(31).

(10) *Unlawful gathering* means a party, gathering, or event where spirituous liquor is served to, or is in the possession of, or consumed by, any minor, or where illegal drugs are in the possession of, or consumed by, any person, regardless of whether it would otherwise qualify as a nuisance party.

(Ord. No. 94.29, 12-8-94; Ord. No. 2003.29, 10-30-03; Ord. No. 2011.56, 11-3-11; Ord. No. 2013.30, 6-13-13)

Sec. 5-32. Nuisance party.

(a) When any police officer responds to any nuisance party and that police officer determines that there is a threat to the public peace, health, safety or general welfare, the police officer shall issue a written notice to any responsible person(s). The responsible person(s) will be assessed a police service fee for special security assignments relating to nuisance parties as provided in Appendix A. The police officer or other police employee shall provide the notice of the violation to the responsible person(s) and the landlord or owner in any of the following manners:

(1) Personal service to any responsible person(s) being cited at the nuisance party.

(2) As to the resident(s) of the premise, posting of the notice on the door of the premises of the nuisance party.

(3) As to the landlord or owner, notification of the posting of the notice of the nuisance party shall be mailed to the property owner at the address shown on the Maricopa County property tax assessment records. Notification shall be made by certified mail. The return receipt will service as evidence of service.

a. Upon request, the landlord must provide the names of any and all occupants listed on the leasing documents at any location where the police department responds to a nuisance party.

(b) If, after written notice of the violation as provided in subsection (a), a second or subsequent police response or responses is necessary to the same location or address for a nuisance party within ninety (90) days of the first response, such response shall be deemed a

second response and subject to the police service fee as provided in Appendix A. If, after written notice of the violation as provided in subsection (a), a third response is necessary to the same location or address for a nuisance party within ninety (90) days of the second response, such response shall be deemed a third response and subject to the police service fee as provided in Appendix A.

(c) On any response to a nuisance party, the responsible person(s) may be assessed a fee commensurate with the next level fee for a nuisance party, if any of the following factors are found:

(1) Minor in possession;

(2) Minor in consumption;

(3) Illegal drugs;

(4) Weapons; or

(5) Felonious conduct.

(Ord. No. 94.29, 12-8-94; Ord. No. 2003.29, 10-30-03; Ord. No. 2011.56, 11-3-11; Ord. No. 2013.30, 6-13-13)

Sec. 5-33. Unlawful gatherings.

(a) When any police officer responds to any unlawful gathering and that police officer determines that there is a threat to the public peace, health, safety or general welfare, the police officer shall issue a written notice to any responsible person(s). The responsible person(s) will be assessed a police service fee for special security assignments relating to unlawful gatherings as prescribed in Appendix A.

(b) A police service fee may be imposed on any police response to an unlawful gathering. For any first response, the responsible person may be eligible for substance use education class in lieu of the police service fee assessment.
(Ord. No. 94.29, 12-8-94; Ord. No. 2003.29, 10-30-03; Ord. No. 2011.56, 11-3-11; Ord. No. 2013.30, 6-13-13)

Sec. 5-34. Fees, billing; and appeal.

(a) The police service fee for special security assignments arising out of nuisance parties and unlawful gatherings shall be progressive depending on the number of repeat unlawful gatherings, and shall be established by city council (see Appendix A).

(b) The amount of such police service fees charged shall be deemed a joint and several debt to the city of any and all responsible persons, whether they received the benefit of such special security assignment services or not. If the responsible person(s) for the nuisance party or unlawful gathering is a juvenile, then the parents or guardians of that juvenile will also be jointly and severally liable for the costs incurred for police services. Any person owing money due for the police service fee shall be liable in an action brought in the name of the city for recovery of such amount, including reasonable attorney fees.

(c) If a responsible person is the person who owns the property where a nuisance party or unlawful gathering takes place, the owner will not be charged the police service fee unless:

(1) The owner was present at or had knowledge of the nuisance party or unlawful gathering and took no reasonable action to prevent the nuisance party or unlawful gathering; or

(2) If the owner had been sent a notice from the city that a nuisance party or unlawful gathering had taken place on the premises, and a subsequent nuisance party or unlawful gathering with the same responsible person, persons, sponsors or hosts occurs within ninety (90) days of the mailing of such notice to the owner; or

(3) If the owner/landlord fails to provide the names of the occupants listed on the leasing documents where the unlawful gathering or nuisance party occurs.

(d) The city shall waive part or all of a police service fee charged against the owner of the property where a nuisance party or unlawful gathering takes place if the owner provides proof that they did not have an adequate period of time to prevent the nuisance party or unlawful gathering that triggered the fee, or that they have taken reasonable action to prevent the occurrence of future disturbances at the property.

(e) The city does not waive its right to seek reimbursement for costs through any other legal remedies or procedures.

(f) The chief of police or his designee shall cause appropriate billings for the special security assignment to be made to the responsible person(s), which shall include the name and address of the responsible person(s), the date and time of the incident and the police services performed, and such other information as may be desired.

(g) Any responsible person(s) who wishes to dispute the determination that they are liable for the police service fee may appeal to the police commander assigned to that geographical location. If the responsible person is unsuccessful they may submit a request for an administrative review hearing in writing no more than ten (10) days after the unsuccessful appeal to the commander. The city and the responsible person(s) disputing the fee shall be given notice of the hearing and an opportunity to be heard. The hearing officer shall establish rules of administration and procedure to ensure the fair and orderly conduct of hearings held pursuant to this section.
(Ord. No. 94.29, 12-8-94; Ord. No. 2003.29, 10-30-03; Ord. No. 2013.13, 6-13-13)

Sec. 5-35. Other remedies.

Nothing in this article shall be construed as affecting the ability to initiate or continue concurrent or subsequent criminal prosecution for any violation of the provisions of the city code or state law arising out of the circumstances necessitating the application of this article.
(Ord. No. 94.29, 12-8-94)

Chapter 6

ANIMALS[1]

ARTICLE I. IN GENERAL

Sec. 6-1. Running at large.

No person who is the owner of, or is in charge of or control of, or has the custody of, any livestock or fowl of any kind or nature shall negligently, wilfully or intentionally permit or allow the same to run at large within the city.
(Code 1967, § 6-1)

State law reference—Authority of city to regulate the roaming at large of animals, A.R.S. §9-240(B)(16A).

Sec. 6-2. Burial of dead animals.

Every person in whose possession any animal shall die shall bury the same at least four (4) feet underground, except cats, dogs or fowl, which shall be buried two (2) feet underground, either upon his own premises, in a city-approved burial place for dead animals, or outside the city.
(Code 1967, § 6-3)

Sec. 6-3. Repealed.
(Code 1967, §§ 6-4—6-6; Ord. No. 2009.38, 10-22-09)

Secs. 6-4—6-20. Reserved.

[1]**Cross references**—Noisy animals, § 21-3(19); animals in parks, § 23-37.
State law reference—Animals generally, A.R.S. §§ 11-1001 to 11-1027.
Zoning and Development Code reference—Small animals, Section 3-404(I)

ARTICLE II. DOGS, CATS, ETC.[2]

DIVISION 1. GENERALLY

Sec. 6-21. Definitions.

As used in this article, unless the context otherwise requires, the following words and phrases shall have the meanings ascribed in this section:

Abandoned animal means any animal that has been found or provided to the police department, whether the owner is known or unknown, that is not the subject of a prosecution for animal cruelty.

Animal means any animal of a species that is susceptible to rabies, except man.

At large means on or off the premises of the owner and not under control of the owner or other persons acting for the owner. Any dog in a suitable enclosure which actually confines the dog shall not be considered to be running at large.

Department means the state department of health services.

Enforcement agent means that person in each county who is responsible for the enforcement of this article and the regulations promulgated thereunder.

Impound means the act of taking or receiving into custody by the enforcement agent any dog or other animal for the purpose of confinement in an authorized pound in accordance with the provisions of this article.

Kennel means an enclosed, controlled area, inaccessible to other animals, in which a person keeps, harbors or maintains five (5) or more dogs under controlled conditions.

Livestock means neat animals, horses, sheep, goats, swine, mules and asses.

Owner means any person keeping an animal other than livestock for more than six (6) consecutive days.

Pound means any establishment authorized for the confinement, maintenance, safekeeping and control of dogs and other animals that come into the custody of the enforcement agent in the performance of his official duties.

Rabies quarantine area means any area in which a state of emergency has been declared to exist due to the occurrence of rabies in animals in or adjacent to this area.

Rabies vaccination certificate means a method of recording and duplicating rabies information that is in compliance with the county enforcement agent's licensing system and/or county enforcement agent's prescribed forms.

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[2]**State law references**—Dog control, A.R.S. § 11-1001, et seq.; local dog control ordinances, A.R.S. § 11-1018.

Stray dog means any dog three (3) months of age or older running at large which is not wearing a valid license tag.

Vaccination means the administration of an antirabies vaccine to animals by a veterinarian, or in authorized pounds by employees trained by a veterinarian.

Veterinarian, unless otherwise indicated, means any veterinarian licensed to practice in this state or any veterinarian employed in this state by a governmental agency.

Veterinary hospital means any establishment operated by a veterinarian licensed to practice in this state that provides clinical facilities and houses animals or birds for dental, medical or surgical treatment. A veterinary hospital may have adjacent to it or in conjunction with it or as an integral part of it, pens, stalls, cages or kennels for quarantine, observation or boarding.

Vicious animal means any animal that (a) has a propensity to bite without provocation; (b) has killed or inflicted injury on a human being on public or private property; or (c) has killed a domestic animal without provocation while the animal was off the owner's property. A determination that an animal is a vicious animal under this chapter may be declared only after a hearing before a justice of the peace or a city magistrate. This definition does not apply to a police animal under the command of its trainer.
(Code 1967, § 6-7; Ord. No. 87.38, 8-27-87; Ord. No. 97.21, 5-8-97; Ord. No. O2014.08, 1-23-14)

State law reference—Similar provisions, A.R.S. § 11-1001.

Sec. 6-22. Violations; penalty.

(a) Any person violating § 6-31 of this code is guilty of a civil offense and subject to a civil sanction not to exceed five hundred dollars ($500).

(b) Any person violating any provision of this chapter, except § 6-31, is guilty of a misdemeanor, punishable pursuant to § 1-7 of this code.
(Ord. No. 412.7, 8-16-84; Ord. No. 92.45, 11-12-92)

Sec. 6-23. Powers, duties of enforcement agent.

(a) The enforcement agent shall have the powers and duties to:

(1) Enforce the provisions of this article and the regulations promulgated under this article.

(2) Issue citations for the violation of the provisions of this article and the regulations promulgated under this article. The procedure for the issuance of notices to appear shall be as provided for peace officers in Arizona Revised Statutes, § 13-3903, except that the enforcement agent shall not make an arrest before issuing the notice.

(3) Be responsible for declaring a rabies quarantine area within the area of jurisdiction. When a quarantine area has been declared the enforcement agent shall meet with the state veterinarian and representatives from the department of health services and the game and fish department to implement an emergency program for the control or rabies within the area. Any regulations restricting or involving movements of livestock within the area shall be subject to approval by the state veterinarian.

(b) The issuance of citations pursuant to this section shall be subject to the provision of Arizona Revised Statutes, § 13-3899.

(c) The enforcement agent may designate deputies.
(Code 1967, § 6-8)

State law reference—Similar provisions, A.R.S. § 11-1007.

Sec. 6-24. Rabies control fund.

(a) The enforcement agent or his authorized representative shall place the monies collected by him under the provisions of this article in a special fund to be known as the rabies control fund to be used for the enforcement of the provisions of this article and the regulations promulgated under this article.

(b) Any unencumbered balance remaining in the rabies control fund at the end of a fiscal year shall be carried over into the following fiscal year.
(Code 1967, § 6-12)

State law reference—Similar provisions, A.R.S. § 11-1011.

Sec. 6-25. Interference with enforcement agent.

It is unlawful for any person to interfere with the enforcement agent in the performance of his duties.
(Code 1967, § 6-16)

State law reference—Similar provisions, A.R.S. § 11-1015.

Sec. 6-26. Biting animals; reporting animal bites; authority to destroy animals.

(a) An unlicensed or unvaccinated dog or any cat that bites any person shall be confined and quarantined in an authorized pound or, upon request of and at the expense of the owner, at a veterinary hospital, for a period of not less than seven (7) days. A dog properly licensed and vaccinated pursuant to this article that bites any person may be confined and quarantined at the home of the owner or wherever the dog is harbored and maintained with the consent of and in a manner prescribed by the enforcement agent.

(b) Any animal other than a dog or cat that bites any person shall be confined and quarantined in an authorized pound or, upon the request of and at the expense of the owner, at a veterinary hospital, for a period of not less than fourteen (14) days, provided that livestock shall be confined and quarantined for the fourteen (14) day period in a manner regulated by the state livestock board. If the animal is a caged rodent, it may be confined and quarantined at the home of the owner or where it is harbored or maintained, for the required period of time, with the consent of and in a manner prescribed by the enforcement agent.

(c) Any wild animal which bites any person may be killed and submitted to the enforcement agent or his deputies for transmission to an appropriate diagnostic laboratory.

(d) Whenever an animal bites any person, the incident shall be reported to the county enforcement agent immediately by any person having direct knowledge.

(e) The county enforcement agent may destroy any animal confined and quarantined pursuant to this section prior to the termination of the minimum confinement period for laboratory examination for rabies if:

(1) Such animal shows clear clinical signs of rabies; or

(2) The owner of such animal consents to its destruction.

(f) Any animal subject to licensing under this article found without a tag identifying its owner shall be deemed unowned.

(g) It is unlawful to have custody of, own or possess an animal declared to be vicious under this chapter unless it is restrained, confined or muzzled so that it cannot bite, attack or cause injury to any person or domestic animal.

(h) The county enforcement agent shall destroy a vicious animal upon an order of a justice of the peace or a city magistrate. A justice of the peace or city magistrate may issue such an order after notice to the owner, if any, and a hearing.
(Code 1967, § 6-15; Ord. No. 97.21, 5-8-97)

State law reference—Animal bites, A.R.S. § 11-1014.

Sec. 6-27. Unlawful keeping of dogs.

It is unlawful for a person to keep, harbor or maintain a dog within the city except as provided by the terms of this article.
(Code 1967, § 6-18)

State law reference—Similar provisions, A.R.S. § 11-1017.

Sec. 6-28. Dog licensing procedure; fees, penalty; dog tags.

(a) The city council shall set an annual license fee which shall be paid for each dog four (4) months of age or over that is kept, harbored or maintained within the boundaries of the city for at least thirty (30) consecutive days of each calendar year. License fees shall become payable at the discretion of city council (See Appendix A). The licensing period shall not exceed the period of time for revaccination as designated by the state veterinarian. License fees shall be paid within ninety (90) days. A penalty not to exceed four dollars ($4) shall be added to the license fee in the event that application is made subsequent to the date on which the dog is required to be licensed under the provisions of this article. This penalty shall not be assessed against applicants who furnish adequate proof that the dog to be licensed has been in their possession less than thirty (30) consecutive days.

(b) Durable dog tags shall be provided. Each dog licensed under the terms of this article shall receive at the time of the licensing such a tag on which shall be inscribed the name of the county, the number of the license, and the date on which it expires. The tag shall be attached to a collar or harness which shall be worn by the dog at all times while running at large, except as otherwise provided in this article. Whenever a dog tag is lost, a duplicate tag shall be issued upon application by the owner and payment of a fee to the enforcement agent.

(c) License fees may be lower for dogs permanently incapable of procreation. An applicant for a license for a dog claimed to be incapable of procreation shall furnish adequate proof satisfactory to the enforcement agent that such dog has been surgically altered to be permanently incapable of procreation.

(d) Any person who fails within fifteen (15) days after written notification from the enforcement agent to obtain a license for a dog required to be licensed, counterfeits or attempts to counterfeit an official dog tag, or remove such tag from any dog for the purpose of wilful and malicious mischief or places a dog tag upon a dog unless the tag was issued for that particular dog, is guilty of a misdemeanor.
(Code 1967, § 6-9)

State law reference—Similar provisions, A.R.S. § 11-1008.

Sec. 6-29. Antirabies vaccination.

(a) Before a license is issued for any dog, the owner must present a vaccination certificate signed by a veterinarian stating the owner's name and address and giving the dog's description, date of vaccination, and type, manufacturer and serial number of the vaccine used and date revaccination is due. A duplicate of each rabies vaccination certificate issued shall be transmitted to the enforcement agent on or before the tenth day of the month following the month during which the dog was vaccinated. No dog shall be licensed unless it is vaccinated in accordance with the provisions of this article and the regulations promulgated under this article.

(b) A dog vaccinated in any other state prior to entry into Arizona may be licensed in Arizona, provided that at the time of licensing the owner of such dog presents a vaccination certificate, signed by a veterinarian licensed to practice in that state or a veterinarian employed by a governmental agency in that state, stating the owner's name and address and giving the dog's description, date of vaccination, and type, manufacturer and serial number of the vaccine used. The vaccination must be in conformity with the provisions of this article and the regulations promulgated under this article.

(c) The enforcement agent shall make provisions for vaccination clinics as deemed necessary. The vaccination shall be performed by a veterinarian.
(Code 1967, § 6-11)

State law reference—Similar provisions A.R.S. § 11-1010.

Sec. 6-30. Dogs at large; wearing license tags.

(a) In a rabies quarantine area, no dogs shall be permitted at large. Each dog shall be confined within an enclosure on the owner's property, or secured so that the dog is confined entirely to the owner's property, or on a leash not to exceed six (6) feet in length and directly under the owner's control when not on the owner's property.

(b) Any dog over the age of four (4) months running at large shall wear a collar or harness to which is attached a valid license tag. Dogs used for control of livestock or while being used or trained for hunting or dogs while being exhibited or trained at a kennel club event or dogs while engaged in races approved by the Arizona Racing Commission, and such dogs while being transported to and from such events, need not wear a collar or harness with a valid license attached provided that they are properly vaccinated, licensed and controlled.

(c) If any dog is unrestrained on the public streets, public parks or public property, then such dog's owner or custodian is in violation of this chapter. Dogs will, however, be permitted to be unleashed within areas of public parks as may be designated "off-leash areas" by the community services director.

(d) Any person whose dog is at large is in violation of this chapter. A dog is not at large if:

(1) Said dog is restrained by a leash, chain, rope, or cord of not more than six (6) feet in length and of sufficient strength to control the actions of said dog;

(2) Said dog is used for control of livestock or while being used or trained for hunting or being exhibited or trained at a kennel club event or while engaged in races approved by the state racing commission; or

(3) While the dog is actively engaged in dog obedience training, accompanied by and under the control of his owner or trainer, provided that the person training said dog has in his possession a dog leash of not more than six (6) feet in length and of sufficient strength to control said dog, and, further, that said dog is actually enrolled in or has graduated from a dog obedience training school.

(e) Any dog at large shall be apprehended and impounded by an enforcement agent.

(f) The enforcement agent shall have the right to enter upon private property when it is necessary to do so in order to apprehend any dog that has been running at large. Such entrance upon private property shall be in reasonable pursuit of such dog(s), and shall not include entry into a domicile or enclosure which confines a dog unless it be at the invitation of the occupant.

(g) The agent may issue a citation(s) to the dog owner or person acting for the owner

when the dog is at large. The procedure of the issuance of notice to appear shall be as provided for peace officers in Arizona Revised Statutes, § 13-3903, except the enforcement agent shall not make an arrest before issuing the notice. The issuance of citations pursuant to this section shall be subject to the provisions of Arizona Revised Statutes, § 13-3899.

(h) In the judgment of the enforcement agent if any dog at large or any other animal that is dangerous or fierce and a threat to human safety that cannot be safely impounded, it may be slain; provided, however, the enforcement agent shall have satisfactorily completed an approved course on the use of weapons and firearms and shall have been so certified by the firearms instructor for the Phoenix Police Department Regional Academy, county sheriff or the National Rifle Association. Additionally, immediately upon slaying any animal, the enforcement agent shall prepare a detailed incident report of the shooting, which report shall be available to the general public.
(Code 1967, § 6-13; Ord. No. 412, § 8, 9-12-85; Ord. No. 96.07, 4-25-96; Ord. No. 2001.17, 7-26-01; Ord. No. 2006.25, 4-6-06; Ord. No. 2010.02, 2-4-10)

State law reference—Dogs at large, A.R.S. § 11-1012.

Sec. 6-31. Removal of animal defecation from public parks and school grounds.

(a) An owner or person having custody of any dog or any other animal shall not permit said dog or any other animal to defecate on any school ground or public park, unless said defecation is removed immediately.

(b) Animal defecation which is removed from a school ground or public park may be deposited in a garbage receptacle upon such school ground or public park if the defecation is first placed in a sealed plastic bag.
(Ord. No. 87.21, § 1, 7-9-87)

Sec. 6-32. Abandoned animals.

(a) If any animal has been found or provided to the police department, that animal shall be considered an abandoned animal.

(1) If no person is immediately available, capable and willing to provide shelter and care for an abandoned animal, the police department shall facilitate the sheltering of that animal through Maricopa County Animal Care and Control, an animal welfare organization, an animal shelter or a suitable home;

(2) If the owner is known, the police department shall provide notice to the owner that the animal has been placed pursuant to this section. That notice shall include the contact information of the sheltering entity; or

(3) If the owner is not known, the police department shall make reasonable efforts to identify the owner and provide notice to the owner. If no owner can be identified, no notice is necessary.

(b) The police department will not take ownership or responsibility for an abandoned animal, but shall facilitate the placement of an abandoned animal pursuant to the provisions of this section.

(c) Any facility sheltering an abandoned animal pursuant to this section shall keep the abandoned animal for no less than seventy-two (72) hours prior to placing the animal for adoption or otherwise disposing of the animal.

(1) The police department shall only be responsible for the first seventy-two (72) hours of sheltering or veterinary costs of an abandoned animal if the animal is not retrieved by the owner or adopted by another person; or

(2) The owner of the abandoned animal or any person adopting an abandoned animal shall be responsible for all sheltering and veterinary costs for the abandoned animal.

(Ord. No. O2014.08, 1-23-14)

Secs. 6-33—6-45. Reserved.

DIVISION 2. IMPOUNDMENT

Sec. 6-46. Generally.

(a) Any stray dog shall be impounded. All dogs and cats impounded shall be given proper care and maintenance.

(b) Each stray dog or any cat impounded shall be kept and maintained at the pound for a minimum of seventy-two (72) hours unless claimed by its owner. Any person may purchase such a dog or cat upon expiration of the impoundment period provided such person pays all pound fees and complies with the licensing and vaccinating provisions of this chapter. If such dog or cat is not claimed within the impoundment period, the enforcement agent shall take possession and may place the dog or cat for sale or may dispose of the dog or cat in a humane manner. If such dog or cat is to be used for medical research, no license or vaccination shall be required. The enforcement agent may destroy impounded sick or injured dogs or cats whenever such destruction is necessary to prevent such dog or cat from suffering or to prevent the spread of disease.

(c) Any impounded licensed dog or any cat may be reclaimed by its owner or such owner's agent provided that the person reclaiming the dog or cat furnishes proof of right to do so and pays all pound fees. If the dog or cat is not reclaimed within the impoundment period, the enforcement agent shall take possession and may place the dog or cat for sale or may dispose of the dog or cat in a humane manner. Any person purchasing such a dog or cat shall pay all pound fees.

(Code 1967, § 6-14; Ord. No. 412, § 8, 9-12-85)

Sec. 6-47. Treatment of animals; methods of euthanasia.

(a) Any animal impounded in a county, city or town pound shall be given proper and humane care and maintenance.

(b) Any dog or cat, destroyed while impounded in a county, city or town pound shall be destroyed only by the use of one of the following:

(1) Sodium pentobarbital or a derivative of sodium pentobarbital;

(2) Nitrogen gas; or

(3) T-61 euthanasia solution or its generic equivalent.

(c) If an animal is destroyed by means specified in paragraph (b)(l) or (b)(3) of this section, it shall be done by a licensed veterinarian or in accordance with procedures established by the state veterinarian pursuant to Arizona Revised Statutes, § 3-1213.
(Code 1967, § 6-21)

State law reference—Impoundment of animals, A.R.S. § 11-1021.

Sec. 6-48. Removing impounded animals.

No person may remove or attempt to remove an animal which has been impounded or which is in the possession of the enforcement agent except in accordance with the provisions of this article and the regulations promulgated under this article.
(Code 1967, § 6-17)

State law reference—Similar provisions, A.R.S. § 11-1016.

Sec. 6-49. Animal cruelty.

(a) A person commits animal cruelty if the person does any of the following:

(1) Intentionally, knowingly or recklessly subjects any animal under the person's custody or control to cruel neglect or abandonment;

(2) Intentionally, knowingly or recklessly fails to provide medical attention necessary to prevent protracted suffering to any animal under the person's custody or control;

(3) Intentionally, knowingly or recklessly inflicts unnecessary physical injury to any animal;

(4) Recklessly subjects any animal to cruel mistreatment;

(5) Intentionally, knowingly or recklessly kills or attempts to kill any animal under the custody or control of another person without either legal privilege or consent of the owner;

(6) Recklessly interferes with, strikes, kills or harms a working or service animal without either legal privilege or consent of the owner;

(7) Intentionally, knowingly or recklessly leaves an animal unattended and confined in a motor vehicle and physical injury to or death of the animal is likely to result;

(8) Recklessly allows any dog that is under the person's custody or control to interfere with, kill or cause physical injury to a service animal;

(9) Strikes any domestic animal with a vehicle resulting in injury to the animal, and leaves the scene without rendering aid and assistance in the care of such animal, if such action can be taken with reasonable safety. For purposes of this section, "domestic animal" shall mean an animal usually domiciled with or cared for by humans, such as a cat, dog, horse or cattle;

(10) Intentionally or knowingly poisons or attempts to poison any domestic animal. For purposes of this section, "poison" or "attempt to poison" includes the act of placing food, water, or lure of another sort which contains poison or contains health threatening foreign objects, such as glass or metal, in a location where any animal may be attracted to it; or

(11) Intentionally, knowingly or recklessly uses a baited trap or mechanical device to capture an animal, causing it injury or death.

(b) It is a defense to subsection (a) above if:

(1) To protect himself or his livestock or poultry, a person does the following:

a. Exposes poison to be taken by a dog that has killed or wounded livestock or by predatory animals on premises owned, leased or controlled by the person; and

b. The treated property is kept posted by the person who authorized or performed the treatment until the poison has been removed; and

c. The poison is removed after the threat to the person or the person's livestock or poultry has ceased to exist.

d. The posting required shall provide adequate warning to persons who enter the property by the point or points of normal entry. The warning notice that is posted shall be readable at a distance of fifty (50) feet, shall contain a poison statement and symbol and shall state the word "danger" or "warning".

(2) A person uses poisons in and immediately around buildings owned, leased or controlled by the person for the purpose of controlling rodents as otherwise allowed by the laws of the state.

(c) It is not a defense to subsection (a) above if:

(1) The animal was trespassing on property owned or controlled by the person alleged to have violated this section;

(2) The animal was not restrained in compliance with any leash law, including § 6-30; or

(3) The person alleged to have violated this section did not know that the animal

was under the custody or control of another person.

(d) This section does not prohibit or restrict:

(1) The taking of wildlife or other activities permitted by or pursuant to A.R.S. Title 17;

(2) Activities permitted by or pursuant to A.R.S. Title 3;

(3) Activities regulated by the Arizona Game and Fish Department or the Arizona Department of Agriculture; or

(4) Any activity involving a dog, whether the dog is restrained or not, if the activity is directly related to the business of shepherding or herding livestock and the activity is necessary for the safety of a human, the dog or livestock.

(e) A person who violates subsection (a) herein is guilty of a class 1 misdemeanor.

(f) A person convicted of violating subsection (a) herein, shall be required by the court to make restitution to the owner of the animal in the full amount of the owner's economic loss, unless the convicted person is the owner.

(1) The full amount of economic loss shall include, but not be limited to: the cost of veterinary care, boarding, and necropsy; the value of the animal; cost of a replacement animal; or cost of training a replacement animal; and

(2) In the case of a working or service animal, any additional costs incurred to replace the services of the working or service animal while the animal remains unavailable to its owner.

(g) Upon conviction of a violation of §§ 6-49 and 6-50, involving an animal that is under the convicted person's custody or control, the court shall order the victimized animal forfeited to the city and the animal may then be placed up for adoption through Maricopa County Animal Care and Control, an animal welfare organization, an animal shelter, a suitable home, or humanely destroyed. For purposes of forfeiture, a conviction may result from a verdict or plea, including a no contest plea. All right, title and interest to the animal is deemed to have vested in the city on the commission of the act or omission giving rise to the conviction. The court shall order the convicted person to make restitution to the city for the city's reasonable costs incurred in housing, care, feeding and treatment of the animal from the time of seizure or impoundment to the time of conviction.

(h) Reserved.

(i) Reserved.

(j) For the purposes of this section:

(1) Animal means a mammal, bird, reptile or amphibian;
(2) Cruel mistreatment means to torture or otherwise inflict unnecessary serious

physical injury upon an animal or to kill an animal in a manner that causes protracted suffering to the animal;

(3) Cruel neglect means to fail to provide an animal with necessary food, water or shelter;

(4) Handler means a law enforcement officer or any other person who has successfully completed a course of training prescribed by the person's agency or the service animal owner and who used a specially trained animal under the direction of the person's agency or the service animal owner;

(5) Service animal means an animal that has completed a formal training program that assists its owner in one or more daily living tasks that are associated with a productive lifestyle and that is trained to not pose a danger to the health and safety of the general public; or

(6) Working animal means a horse or dog used by a law enforcement agency, specially trained for law enforcement work and is under the control of a handler.

(Ord. No. O2014.08, 1-23-14)

Sec. 6-50. Authority to remove, impound and forfeit animals; cost of care.

(a) A peace officer, enforcement agent or county animal control officer is hereby authorized and empowered to seize and impound any animal as follows:

(1) On process issued pursuant to the provisions of A.R.S. Title 13, including a search warrant.

(2) If the peace officer, enforcement agent or county animal control officer has reasonable grounds to believe that a violation of § 6-49 has occurred.

(3) If the peace officer, enforcement agent or animal control officer has reasonable grounds to believe any of the following:

a. That an animal is in distress caused by mistreatment, lack of food or water, restraint, restriction of movement, confinement, lack of sufficient exercise space, constrictive gear, injury, illness, physical impairment or parasites; or

b. That an animal's well-being is threatened by a dangerous condition or circumstance; or

c. That seizure is necessary to protect the health or safety of the animal or the health and safety of other animals; or

d. That an animal is vicious or destructive and may be a danger to the safety of any person or other animal; or

e. That an animal is an abandoned animal.

(b) Nothing in this section shall be construed to prohibit the attorney for the state, after

seizure of an animal by a peace officer, enforcement agent or animal control officer, from taking possession of and keeping the animal when the attorney deems the animal to be of evidentiary value in any criminal prosecution relating to the condition of the animal. If the attorney for the state intends to take possession of and retain an animal as evidence in any criminal prosecution, the attorney shall promptly provide written notice to the police department.

(c) The city may contract with any person, agency or shelter, including volunteers, to house, care for and treat an animal that has been seized and impounded pursuant to the provisions of this section.

(d) The owner or keeper of an animal properly seized under this section is liable for the cost of housing, caring for and treating the animal. Unless the seizure or impoundment of an animal is for evidentiary purposes, supported by a written notice of intent as required by subsection (b), or the court determines at a post-seizure hearing that the seizure or impoundment was not justified, the owner or keeper shall post with the court a bond, in an amount established by city council resolution (see Appendix A), in the form of cash or a surety's undertaking to offset some of the costs incurred by the city relating to housing of, caring for and treating the animal. The owner or keeper shall post the bond within ten (10) days of the date of the notice provided under § 6-51. The owner or keeper shall post the bond within three (3) days of the date of the seizure if pursuant to § 6-50(a)(3)(e). If the owner or keeper fails to post the bond within the specified time, the owner or keeper shall be deemed to have abandoned the animal. The animal may then be placed for adoption through Maricopa County Animal Care and Control, an animal welfare organization, an animal shelter, a suitable home or humanely destroyed.

(e) Upon forfeiture of an animal, the court shall forfeit the bond to pay the expenses incurred in the housing of, caring for and treating the animal. If the bond exceeds the expenses, the court shall exonerate the bond amount and order the security returned to the owner or keeper only to the extent the bond exceeds the expenses incurred in the housing of, caring for and treatment of the animal. The court shall order the bond exonerated and the security returned to the owner or keeper if at the conclusion of the case the animal is not forfeited under this article.
(Ord. No. O2014.08, 1-23-14; Ord. No. O2014.56, 10-2-14)

Sec. 6-51. Post-seizure hearings.

(a) The burden of proof in the seizure hearing pursuant to this article shall be by a preponderance of the evidence. The formal rules of evidence shall not apply and reliable hearsay shall be admissible. The court shall order the animal to be forfeited to the city to be placed for adoption through Maricopa County Animal Care and Control, an animal welfare organization, an animal shelter, a suitable home or humanely destroyed if the court finds from a preponderance of the evidence that a violation of § 6-49 or § 6-50 has occurred or if the court finds that the animal will suffer needlessly if humane destruction is delayed.

(b) Whenever a peace officer, enforcement agent or animal control officer seizes or impounds an animal based on a reasonable belief that a violation of § 6-49 or § 6-50 has occurred or that prompt action is required to protect the health or safety of the animal or the health and safety of other animals, the owner or keeper of the animal may request a post-seizure hearing to determine the validity of the seizure or impoundment or both. The post-seizure hearing shall be commenced as follows:

(1) If the owner is known, the owner may sign a statement permanently

relinquishing ownership of the animal to the peace officer or enforcement agent. The statement shall indicate that the animal will be either placed for adoption, through Maricopa County Animal Care and Control, an animal welfare organization, an animal shelter, a suitable home or humanely destroyed according to law;

(2) If the owner's or keeper's whereabouts cannot be determined, the notice shall be mailed to the owner or keeper's last known address by registered or certified mail, return receipt requested;

(3) The police department, within forty-eight (48) hours, excluding weekends and city holidays, of the seizure or impoundment, shall cause a notice to be affixed to a conspicuous place where the animal was situated or personally deliver a notice of the seizure or impoundment, or both, to the owner or keeper, if known or ascertainable after reasonable investigation. The notice shall include the following:

a. The name, business address and telephone number of the person providing the notice;

b. A description of the animal seized, including identification upon the animal if any;

c. The authority and purpose for the seizure, or impoundment, including the time, place and circumstances under which the animal was seized;

d. A statement that, in order to receive a post-seizure hearing, the owner or person authorized to keep the animal, or his or her agent, shall request the hearing by signing and returning to the court an enclosed declaration of ownership or right to keep the animal within ten (10) days, including weekends and city holidays, of the date of the notice. The declaration must be returned by personal delivery or by mail. The declaration will be deemed received at the time it is personally served or, if mailed, upon receipt;

e. A statement that the owner or keeper is responsible for the cost of housing, caring for and treating the animal that was properly seized and impounded;

f. A statement that the owner is required to post a bond with the court to defray the expenses of housing, caring for and treating the animal that has been properly seized and impounded;

g. A warning that if the owner or keeper fails to post the bond within ten (10) days of the seizure, including weekends and holidays, the animal will be deemed abandoned and will be placed for adoption through Maricopa County Animal Care and Control, an animal welfare organization, an animal shelter, a suitable home or humanely euthanized according to law;

h. A warning that if the owner or keeper fails to appear at the hearing, the

court shall order the animal forfeited to the city to be placed for adoption through Maricopa County Animal Care and Control, an animal welfare organization, an animal shelter, a suitable home or humanely destroyed according to law; and

i. A warning that this civil hearing is separate and distinct from any animal cruelty prosecution, that anything the person testifies to at the hearing may be used against them in the criminal prosecution, that they are not entitled to a public defender, that if they wish to be represented by an attorney at the seizure hearing they must retain an attorney and that no continuances of the hearing will be granted to secure an attorney.

(4) The court shall conduct the post-seizure hearing within fifteen (15) days of the court's receipt of the request, excluding weekends and city holidays; and

(5) Failure of the owner or keeper, or the owner's or keeper's agent, to request or to attend a scheduled hearing shall result in a forfeiture of any right to a post-seizure hearing and the animal shall be abandoned and will be either placed up for adoption through Maricopa County Animal Care and Control, an animal welfare organization, an animal shelter, a suitable home or humanely destroyed according to law.

a. In the event of the acquittal or final discharge without a conviction of a person who was charged under this article, or a determination that the animal is not vicious, the court shall, upon demand, direct the release of seized or impounded animals that have not been forfeited upon a showing of proof of ownership. Any questions regarding ownership shall be determined in a separate hearing by the court and the court shall hear testimony from any persons who may assist in determining ownership of the animal. If the owner is determined to be unknown or the owner is prohibited or unable to retain possession of the animal for any reason, the court shall order the animal released for placement with Maricopa County Animal Care and Control, an animal welfare organization, an animal shelter, a suitable home or humanely euthanized according to law. This subsection shall not be construed to cause the release of an animal seized or impounded pursuant to any other local, state or federal law or regulation; and

b. It is unlawful for a person to fail to produce the animal at the time of the hearing if the animal was not initially seized, make arrangements with and allow the police department to view the animal upon request, or provide verification that the animal has been humanely destroyed.

(Ord. No. O2014.08, 1-23-14)

Sec. 6-52. Enforcement; nonpreclusion of other enforcement action; appeal.

(a) Any peace officer, enforcement agent or county animal control officer is hereby authorized and empowered to enforce the provisions of this article and to issue citations for the violations thereof.

(b) It shall be unlawful for any person(s) to interfere with any officer authorized to enforce this article in the performance of his duties, or to release any animal duly seized and/or impounded and any person guilty of such act shall be guilty of a class 1 misdemeanor.

(c) Use of the civil procedures and remedies provided for in this article shall neither require nor preclude other enforcement action on the same facts, including a criminal prosecution of the owner. The civil procedures and remedies provided for in this article are remedial and not punitive and are not precluded by an acquittal or conviction in a criminal proceeding.

(d) Appeal by either party of the decision of the court shall be by way of special action to the superior court on the record of the hearing. The court, at the hearing, shall issue an order that includes written findings of fact and conclusions of law. If either party claims the record to be incomplete or lost and the court who conducted the hearing so certifies, a new hearing shall be conducted before that court. The owner must post a bond equivalent to sixty (60) days of impoundment costs in order to prefect the owner's appeal. Notice of the amount due shall be given to the owner by the court at the time of the seizure hearing if forfeiture is ordered. The appealing party shall bear the cost of preparing the record of the hearing on appeal. No appeal shall be taken later than five (5) days after the decision.

(e) Unless good cause is shown, the owner shall be liable for all veterinary, impound and board fees resulting from the animal's impoundment until a final decision by the court, including the pendency of an appeal. The owner shall not be responsible for any fees if the owner prevails at the hearing or ultimately on appeal.
(Ord. No. O2014.08, 1-23-14)

Sec. 6-53. Disposition of animals.

Any animal forfeited, abandoned, ownerless or unclaimed, and any other animal to be permanently disposed of by the city shall be placed for adoption through Maricopa County Animal Care and Control, an animal welfare organization, an animal shelter, a suitable home or humanely destroyed.
(Ord. No. O2014.08, 1-23-14)

Chapter 7

BICYCLES[1]

ARTICLE I. DEFINITIONS, PENALTIES, APPLICATION

Sec. 7-1. Definitions.

The following definitions shall apply in the interpretation and enforcement of this chapter:

Bicycle: A device propelled by human power which any person may ride, having two (2) tandem wheels or having three (3) wheels in contact with the ground.

Bicycle lane: Any portion of a roadway designated for bicycle use and defined by pavement markings, curbs, signs or other traffic-control devices.

Dealer: A retail distributor of new or secondhand bicycles.
(Ord. No. 87.24, 1-14-88; Ord. No. 88.42, § 1, 6-30-88; Ord. No. 94.34, 5-11-95; Ord. No. 2013.38, 7-30-13)

Sec. 7-2. Responsibility of parent.

The parent of a child and the guardian of a ward shall not authorize or knowingly permit the child or ward to violate any provisions of this chapter.
(Ord. No. 87.24, 1-14-88)

State law reference—Similar provisions, A.R.S. § 28-811(A).

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[1]**Editor's note—**Ordinance No. 87.24, adopted Jan. 14, 1988, amended Ch. 7, Bicycles, in its entirety to read as herein set out. The substantive provisions of former Ch. 7, §§ 7-1—7-4, 7-21—7-26, 7-41—7-47, 7-61—7-74, 7-91—7-95 and 7-101—7-106, were derived from the following:

Code 1967	Sec.	Ord. No.	Date
	7-1—7-17	371.5	1-10-85
	7-19—7-35	371.6	11-14-85
	7-36(a), (b)	86.65	9-25-86
			7-31

Cross reference—Motor vehicles and traffic, Ch. 19.
State law reference—Authority of city to license and regulate operation of bicycles, A.R.S. § 28-627(A)(8).

Sec. 7-3. Application of provisions

The regulations of this chapter in their application to bicycles shall apply when a bicycle is operated upon any highway, roadway, bicycle path or side walk subject to those exceptions stated in this article.
(Ord. No. 87.24, 1-14-88; Ord. No. 2013.38, 7-30-13)

State law reference—Similar provisions, A.R.S. § 28-811(B).

Sec. 7-4. Civil sanctions.

Any person violating any of the provisions of this chapter shall be liable for the imposition of a civil sanction not to exceed two hundred fifty dollars ($250), unless another penalty is specified. There is no penalty or civil sanction for violation of section 7-11.
(Ord. No. 87.24, 1-14-88; Ord. No. 94.34, 5-11-95)

Secs. 7-5—7-10. Reserved.

ARTICLE II. REGISTRATION

Sec. 7-11. Registration requirements.

(a) Every owner of a bicycle who resides within the city may register the bicycle with the Tempe police department.

(b) This article shall apply to every bicycle owner who has resided in the city for thirty (30) days or longer regardless of whether they are a part-time or full-time resident.

(c) This article shall in no way interfere with the secondhand dealer's responsibility pursuant to chapter 16, Tempe City Code.
(Ord. No. 87.24, 1-14-88; Ord. No. 88.42, § 2, 6-30-88; Ord. No. 94.34, 5-11-95; Ord. No. 2013.38, 7-30-13)

Sec. 7-12. Bicycle registration—Required information.

The bicycle registration will contain the following information:

(a) Name, address, phone number, and email address of owner;

(b) Make, model, serial number, color and general description of bicycle;

(c) Date of registration.

(Ord. No. 87.24, 1-14-88; Ord. No. 94.34, 5-11-95; Ord. No. 2013.38, 7-30-13)

Sec. 7-13. Repealed.
(Ord. No. 87.24, 1-14-88; Ord. No. 94.34, 5-11-95)

Sec. 7-14. Fees.

There is no fee to register a bicycle.
(Ord. No. 87.24, 1-14-88; Ord. No. 92.38, 8-20-92; Ord. No. 94.34, 5-11-95; Ord. No. 2013.38, 7-30-13)

Sec. 7-15. Duration.

(a) The registration provided for in this article shall be valid for the life of the bicycle. All bicycle registrations shall be appurtenant to the specific bicycle for which issued, and no other, and shall not be transferred to or used on any other bicycle.

(b) Every person who resides within the city and who purchases or obtains a bicycle from a private owner may advise the Tempe police department of such purchase or transfer within thirty (30) days-of the sale or transfer.
(Ord. No. 87.24, 1-14-88; Ord. No. 2013.38, 7-30-13)

Sec. 7-16. Applications for registration.

Bicycles may be registered in-person at the Tempe police department or via the Tempe police department website.
(Ord. No. 87.24, 1-14-88; Ord. No. 94.34, 5-11-95; Ord. No. 2013.38, 7-30-13)

Sec. 7-17. Repealed.
(Ord. No. 87.24, 1-14-88; Ord. No. 94.34, 5-11-95; Ord. No. 2013.38, 7-30-13)

Sec. 7-18. Repealed.
(Ord. No. 87.24, 1-14-88; Ord. No. 94.34, 5-11-95; Ord. No. 2013.38, 7-30-13)

Sec. 7-19. Removal, etc., of frame numbers.

No person shall knowingly remove, destroy, mutilate or alter the serial number of any bicycle frame or other identifying number of any bicycle. No person shall operate or possess a bicycle on public or private property within the city which has a serial number, or other identifying number that has been removed, destroyed, mutilated or altered.
(Ord. No. 87.24, 1-14-88; Ord. No. 2013.38, 7-30-13)

Sec. 7-20. Repealed.
(Ord. No. 87.24, 1-14-88; Ord. No. 94.34, 5-11-95; Ord. No. 2013.38, 7-30-13)

Secs. 7-21—7-30. Reserved.

ARTICLE III. BICYCLE DEALERS

Sec. 7-31. Repealed.
(Ord. No. 87.24, 1-14-88; Ord. No. 2013.38, 7-30-13)

Secs. 7-32—7-40. Reserved.

ARTICLE IV. ABANDONED BICYCLES

Sec. 7-41. Duty of police to take possession.

It shall be the duty of the police department to take possession of all bicycles that have been abandoned on any street, alley or on any other public place in the city.
(Ord. No. 87.24, 1-14-88)

Sec. 7-42. Notice to owner.

Upon taking possession of any abandoned bicycle, it shall be the duty of the police department to ascertain, if possible, the owner thereof and to notify such owner that such bicycle is in the possession of the police department. This notice may be given to the owner in person, by phone or by ordinary mail.
(Ord. No. 87.24, 1-14-88)

Sec. 7-43. Sales.

(a) In the event that the owner of an abandoned bicycle cannot be found or does not claim such bicycle, the chief of police shall proceed to sell such bicycle at public auction; and such sale shall be held in the manner set forth in this chapter. However, the finder of such bicycle shall be notified prior to the auction and allowed to make claim to said bicycle.

(b) From time to time the chief of police may decide to exempt certain bicycles from the above sale procedure and give such exempted bicycles to nonprofit organizations for disbursement. The nonprofit organizations shall request the bicycles in writing directed to the chief of police. The organization shall provide a specific statement as to the proposed use of the bicycles in its request.
(Ord. No. 87.24, 1-14-88; Ord. No. 2013.38, 7-30-13)

Sec. 7-44. Notice of sale.

After no less than thirty (30) days from the date of the taking of possession of an abandoned bicycle or a bicycle where the owner is unknown, the police department shall publish in the official newspaper of the city or post on the police department website a notice of sale of such bicycle. Such notice shall be published or posted at least thirty (30) days before the date of the sale. Such notice shall contain a brief description of the bicycle, its number, if known; and shall also state the hour, date and place of sale and the place where the bicycle may be seen.
(Ord. No. 87.24, 1-14-88; Ord. No. 97.09, 2-13-97; Ord. No. 2013.38, 7-30-13)

Sec. 7-45. Auction, disposition of funds.

The sale shall be a public auction to the highest bidder for cash. All money received from such sale over and above the cost of advertising and sale shall be paid over to the finance and technology director and retained in a separate fund for at least six (6) months. Upon the expiration of such time, unless sooner claimed as provided in this article, such money shall be paid over into the general fund.
(Ord. No. 87.24, 1-14-88; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10; Ord. No. 2013.38, 7-30-13)

Sec. 7-46. Claimants.

Should any person, within six (6) months after the date of the sale of a bicycle, make claim to such bicycle, such sum of money as may be in the hands of the city finance and technology director, less the sales and advertising costs which has been derived from the sale, shall be paid over to such claimant upon proof of his right to receive the same. In no event shall any claim be considered unless it is presented to the finance and technology director, in writing, under oath, and before the expiration of six (6) months from the date of the sale.
(Ord. No. 87.24, 1-14-88; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Sec. 7-47. Repealed.
(Ord. No. 87.24, 1-14-88; Ord. No. 2013.38, 7-30-13)

Secs. 7-48—7-50. Reserved.

ARTICLE V. OPERATION

Sec. 7-51. Parking of bicycles.

No person shall park a bicycle upon a bikeway, or upon the sidewalk, except in such manner as to afford the least obstruction to pedestrians and bicycles.
(Ord. No. 87.24, 1-14-88)

Sec. 7-52. Riding on sidewalks or bicycle lanes.

(a) The city traffic engineer is authorized to erect or place signs on any sidewalk or roadway, prohibiting the riding of bicycle thereon by any person; and when such signs are in place no person shall disobey same.

(b) Whenever any person is riding a bicycle upon a sidewalk, such person shall yield the right-of-way to any pedestrian and should give audible signal before overtaking and passing such pedestrian.

(c) No person shall ride or operate a bicycle in any direction except that permitted by vehicular traffic on the same side of the roadway where the sidewalk or bicycle lane exists; provided, that bicycles may proceed either way where signs or pavement markings on the sidewalk, bikeway or bicycle lane appear designating two-way traffic.

(d) Any person riding a bicycle on a bikeway, sidewalk or bicycle path that is about to enter or cross a roadway shall yield the right-of-way to all traffic on such roadway.
(Ord. No. 87.24, 1-14-88)

Sec. 7-53. Driving vehicles across sidewalks.

No person shall drive a vehicle upon or across a sidewalk except to enter or leave the roadway and only after giving the right-of-way to all bicycles or pedestrians lawfully upon the sidewalk.
(Ord. No. 87.24, 1-14-88)

Sec. 7-54. Bikeways—establishment and signs.

The city traffic engineer is authorized to erect or place signs upon any street in the city indicating the existence of a bikeway and otherwise regulating the operation and use of vehicles and bicycles with respect thereto, so long as the same are consistent with this chapter. When such signs are in place, no person shall disobey the same.
(Ord. No. 87.24, 1-14-88)

Sec. 7-55. Pedal bicycle with helper motors (mopeds).

(a) Upon a roadway where motor vehicles are permitted, a person may drive a moped in any lane designated for use of bicycles.

(b) Pedal bicycles with helper motors shall be prohibited on bicycle paths, trails and on sidewalks designated for use by nonmotorized pedal bicycles, except when propelled by human power with helper motor disengaged.
(Ord. No. 87.24, 1-14-88)

Secs. 7-56—7-60. Reserved.

ARTICLE VI. BICYCLE ADVISORY COMMITTEE

Sec. 7-61. Repealed.
(Ord. No. 88.05, 2-11-88; Ord. No. 91.22, 6-27-91; Ord. No. 2004.52, 12-9-04)

Sec. 7-62. Repealed.
(Ord. No. 88.05, 2-11-88; Ord. No. 91.22, 6-27-91; Ord. No. 2004.52, 12-9-04)

Sec. 7-63. Repealed.
(Ord. No. 88.05, 2-11-88; Ord. No. 91.22, 6-27-91; Ord. No. 2001.17, 7-26-01; Ord. No. 2004.52, 12-9-04)

Sec. 7-64. Repealed.
(Ord. No. 88.05, 2-11-88; Ord. No. 91.22, 6-27-91; Ord. No. 2004.52, 12-9-04)

Sec. 7-65. Repealed.
(Ord. No. 88.05, 2-11-88; Ord. No. 91.22, 6-27-91; Ord. No. 2001.17, 7-26-01; Ord. No. 2004.52, 12-9-04)

Editor's note—See transportation commission, §§ 2-245—2-250. Provisions of the bicycle advisory committee were incorporated into a single advisory board to plan balanced transportation systems.

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Chapter 8

BUILDINGS AND BUILDING REGULATIONS[1]

ARTICLE I. TEMPE BUILDING SAFETY ADMINISTRATIVE CODE

Sec. 8-100. Adopted; where filed; amendments.

(a) That certain document known as "The Tempe Building Safety Administrative Code," three (3) copies of which are on file in the office of the city clerk, and this same code and appendices are hereby referred to, adopted and made a part hereof, as if fully set out in this article.

(b) The provisions of this article, other than subsection (a) of this section, this subsection and the sections reserved at the end of this article, are amendments to the Tempe Building Safety Administrative Code as now or hereafter adopted in subsection (a). All sections, chapters, etc., in this article, other than subsection (a) of this section, this subsection and the sections reserved at the end of this article, shall be considered to be both a part of this code and a part of the Tempe Building Safety Administrative Code. Material encased in brackets ([.]) shall be considered to be a part of this code only, and not a part of the Tempe Building Safety Administrative Code. Material encased in quotation marks (" ") shall be considered to be a part of this code and a part of the Tempe Building Safety Administrative Code. Except for the sections reserved at the end of this article, provisions in this article shall be cited as Article I, **[insert references to sections, etc.]** of the Tempe City Code.
(Ord. No. 2011.33, 9-22-11)

Charter reference—Adoption by reference, § 2.14.
State law reference—Adoption by reference, A.R.S. § 9-801 et seq.

Sec. 8-101. General.

101.1. Title. These provisions shall be known as the Tempe Building Safety Administrative Code, may be cited as such, and will be referred to herein, as this chapter.

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[1]**Editor's note**—Chapter 8 was rewritten and renumbered in its entirety (Ord. No. 2005.89).

Cross references—Drainage and flood control, Ch. 12; Fire prevention and protection, Ch. 14; residential development tax, Section 16A-40 et seq.; Mobile homes and trailer coaches, Ch. 18; noise from construction projects, Section 20-8; Planning and development, Ch. 25; Subdivisions, Ch. 30.

State law reference—General authority to regulate buildings, A.R.S. §§ 9-240(B)(7), 9-276(A)14, (A)15).

101.2. Scope. The provisions of this Chapter shall serve as the administrative, organizational and enforcement rules and regulations for the technical codes which regulate site preparation, construction, alteration, movement, enlargement, replacement, demolition, repair, maintenance, use and occupancy of buildings, structures and building service equipment or appurtenances attached thereto within the City of Tempe, Arizona.

EXCEPTIONS: The provisions of this chapter and the technical codes shall not apply to any of the following:

1. Tree houses.

2. Portable or temporary amusement devices and structures, including merry-go-rounds, ferris wheels, rotating conveyances, slides, similar devices and accessory structures whose use is necessary for the operation of such amusement devices and structures; any accessory structure included in the provisions of this sub-section shall be limited to a cover or roof over each device, but shall not include any storage building or detached structure which is not an integral part of the device.

3. Tanks or basins, without a building above, built below grade which is a part of the city water or sewage treatment process. Storage tanks resting in or upon the ground and installed in accordance with the requirements of the fire medical rescue department.

4. Electrical installations in watercraft other than floating buildings, railway rolling stock, aircraft or vehicles other than mobile homes and recreational vehicles. This shall not exempt electrical installations contained in, on or attached to watercraft, railway rolling stock, aircraft or vehicles when such electrical installations receive energy from an external source of power.

5. Electrical installations underground in mines and self-propelled mobile surface mining machinery and its attendant electrical trailing cable.

6. Electrical installations of transportation systems for generation, transformation, or distribution of power used exclusively for the operation of rolling stock, or installations used exclusively for signaling and communication purposes.

7. Electrical installations of communication equipment under exclusive control of communication utilities located outdoors or in building spaces used exclusively for such installations.

8. Electrical installations under the exclusive control of electrical utilities for the purpose of the communication, or metering; or for the generation, control, transformation, transmission and distribution of electrical energy.

9. Piping systems of natural gas with an operating pressure greater than 125 pounds per square inch gauge (psig) (862kPa gauge) and for LP-gas with an operating pressure of greater than 20 psig (140 kPa gauge) except as provided in Section 402.6 of the International Fuel gas Code.

10. Portable LP-gas appliances and equipment of all types not connected to a fixed fuel piping system.

11. Installation of farm appliances and equipment such as brooders, dehydrators, dryers and irrigation equipment.

12. Raw material (feedstock) applications except for piping to special atmosphere generators.

13. Oxygen-fuel gas cutting and welding systems.

14. Industrial gas applications using gases such as acetylene and acetylenic compounds, hydrogen, ammonia, carbon monoxide, oxygen and nitrogen.

15. Petroleum refineries, pipeline compressor or pumping stations, loading terminals, compounding plants, refinery tank farms and natural gas processing plants.

16. Integrated chemical plants or portions of such plants where flammable or combustible liquids or gases are produced by, or used in, chemical reactions.

17. LP-gas installations at utility gas plants.

18. Liquefied natural gas (LNG) installations.

19. Fuel gas piping in power and atomic energy plants.

20. Proprietary items of equipment, apparatus or instruments such as gas-generating sets, compressors and calorimeters.

21. LP-gas equipment for vaporization, gas mixing and gas manufacturing.

22. Temporary LP-gas piping for buildings under construction or renovation not becoming part of the permanent piping system.

23. Installation of hydrogen gas, LP-gas and compressed natural gas (CGN) systems on vehicles.

24. Except as provided in Section 401.1.1 of the International Fuel Gas Code (IFGC), gas-piping, meters, gas pressure regulators and other appurtenances used by the serving gas utility supplier in the distribution of gas, other than LP-gas.

25. Piping systems for mixtures of gas and air within the flammability range with an operating pressure greater than 10 psig (69kPa gauge).

26. Portable fuel cell appliances that are neither connected to a fixed piping system nor interconnected to a power grid.

27. Work located primarily in a public way.

101.3. Intent. The purpose of the technical codes is to establish the minimum requirements to safeguard the public health, safety and general welfare through structural strength, means of egress facilities, stability, sanitation, adequate light and ventilation, and safety

to life and property from fire and other hazards attributed to the built environment and to provide safety to fire fighters and emergency responders during emergency operations.

101.4. Technical codes. The technical codes shall include all of the following codes applied as indicated, plus the codes and standards referenced in the technical codes shall be considered part of the requirements of the technical codes to the prescribed extent of each such reference.

101.4.1. Building code. The provisions of the International Building Code and amendments thereto shall apply to the construction, alteration, movement, enlargement, replacement, repair, equipment, use and occupancy, location, removal and demolition of every building or structure or any appurtenances connected or attached to such buildings or structures.

EXCEPTIONS:

a. Detached one- and two-family dwellings and multiple single-family dwellings (townhouses) not more than three stories above grade plane in height with separate means of egress and their accessory structures shall be permitted to comply with the International Residential Code.

b. With prior approval of the building official, existing buildings undergoing repair, alteration or additions and change of occupancy shall be permitted to comply with the International Existing Building Code.

101.4.2. Residential code. The provisions of the International Residential Code shall apply to the construction, alteration, movement, enlargement, replacement, repair, equipment, use and occupancy, location, removal and demolition of detached one- and two-family dwellings and multiple single-family dwellings (townhouses) not more than three stories above grade plane in height with separate means of egress and their accessory structures.

EXCEPTIONS:

a. With prior approval of the building official, existing buildings undergoing repair, alteration or additions and change of occupancy shall be permitted to comply with the International Existing Building Code.

b. Live/work units shall comply with the International Building Code as R-2 Occupancies.

c. Fire suppression shall be provided in accordance with Section 903 of the Tempe Building Code.

101.4.3. Electrical code. The provisions of the National Electrical Code shall apply to the installation of electrical systems, including alterations, repairs, replacement, equipment, appliances, fixtures, fittings and appurtenances thereto.

EXCEPTION: Electrical work for detached one- and two-family dwellings and multiple single-family dwellings (townhouses) not more than three stories above grade plane in height with separate means of egress and their accessory structures shall be permitted to comply with the International Residential Code.

101.4.4. Plumbing code. The provisions of the or International Plumbing Code shall apply to the installation, alteration, repair, replacement and maintenance of plumbing systems, including equipment, appliances, fixtures, fittings and appurtenances, and where connected to a water or sewage system and all aspects of a nonflammable medical gas system.

EXCEPTIONS:

a. Plumbing work for detached one- and two-family dwellings and multiple single-family dwellings (townhouses) not more than three stories above grade plane in height with separate means of egress and their accessory structures shall be permitted to comply with the International Residential Code.

b. Plumbing systems in existing buildings undergoing repair, alteration or additions and change of occupancy shall be permitted to comply with the International Existing Building Code.

101.4.5. Mechanical code. The provisions of the International Mechanical Code shall apply to the installation, alterations, repairs and replacement of mechanical systems, including equipment, appliances, fixtures, fittings and/or appurtenances, including ventilating, heating, cooling, air-conditioning and refrigeration systems, incinerators and other energy-related systems.

EXCEPTIONS:

a. Mechanical work for detached one- and two-family dwellings and multiple single-family dwellings (townhouses) not more than three stories above grade plane in height with separate means of egress and their accessory structures shall be permitted to comply with the International Residential Code.

b. Mechanical systems in existing buildings undergoing repair, alteration or additions and change of occupancy shall be permitted to comply with the International Existing Building Code.

101.4.6. Fuel gas code. The provisions of the International Fuel Gas Code shall apply to the installation of gas piping from the point of delivery, gas appliances and related accessories. These requirements apply to gas piping systems extending from the point of delivery to the inlet connections of appliances and the installation and operation of residential and commercial gas appliances and related accessories.

EXCEPTIONS:

a. Fuel gas work for detached one- and two-family dwellings and multiple single-family dwellings (townhouses) not more than three stories above grade plane in height with separate means of egress and their accessory structures shall be permitted to comply with the International Residential Code.

b. Fuel-gas piping systems, fuel-gas utilization equipment and related accessories ion existing buildings undergoing repair, alteration or additions and change of occupancy shall be permitted to comply with the International Existing Building Code.

c. The design, installation, maintenance, alteration and inspection of mechanical systems operating with fuels other than fuel gas shall be regulated by the International Mechanical Code.

101.4.7. Existing building code. With prior approval of the building official, the provisions of the International Existing Building Code shall be permitted to apply to existing buildings undergoing repair, alteration, addition, relocation, and change of occupancy.

EXCEPTION: A building or portion of a building not previously occupied, used for its intended purpose, for which a Certificate of Occupancy has not been issued shall comply with the International Building Code.

101.4.7.1. IEBC Compliance methods. The repair, alteration, change of occupancy, addition or relocation of all existing buildings shall comply with one of the methods listed in Sections 101.4.7.2 through 101.4.7.4 as selected by the applicant. Application of a method shall be the sole basis for assessing the compliance of work performed under a single permit unless otherwise approved by the code official. Sections 101.4.7.2 through 101.4.7.4 shall not be applied in combination with each other. Where this code requires consideration of the seismic-force-resisting system of an existing building subject to repair, alteration, change of occupancy, addition or relocation of existing buildings, the seismic evaluation and design shall be based on Section 101.4.7.4 regardless of which compliance method is used.

EXCEPTION: Subject to the approval of the code official, alterations complying with the laws in existence at the time the building or the affected portion of the building was built shall be considered in compliance with the provisions of this code unless the building is undergoing more than a limited structural alteration as defined in Section 807.4.3. New structural members added as part of the alteration shall comply with the International Building Code. Alterations of existing buildings in flood hazard areas shall comply with Section 601.3.

101.4.7.2. Prescriptive compliance method. Repairs, alterations, additions and changes of occupancy complying with Chapter 3 of this code in buildings complying with the International Fire Code shall be considered in compliance with the provisions of this code.

101.4.7.3. Work area compliance method. Repairs, alterations, additions, changes in occupancy and relocated buildings complying with the applicable requirements of Chapters 4 through 12 of this code shall be considered in compliance with the provisions of this code.

101.4.7.4. Performance compliance method. Repairs, alterations, additions, changes in occupancy and relocated buildings complying with Chapter 13 of this code shall be considered in compliance with the provisions of this code.

101.4.7.5. Evaluation and design procedures. The seismic evaluation and design shall be based on the procedures specified in the International Building Code, ASCE 31 or ASCE 41. The procedures contained in Appendix A of this code shall be permitted to be used as specified in Section 101.4.7.5.2.

101.4.7.5.1. Compliance with IBC level seismic forces. Where compliance with the seismic design provisions of the International Building Code is required, the procedures shall be in accordance with one of the following:

1. The International Building Code using 100 percent of the prescribed forces. The values of R, Ω_0 and C_d used for analysis in accordance with Chapter 16 of the International Building Code shall be those specified for structural systems classified as "Ordinary" in accordance with Table 12.2-1 of ASCE 7, unless it can be demonstrated that the structural system satisfies the proportioning and detailing requirements for systems classified as "Detailed," "Intermediate" or "Special."

2. Compliance with ASCE 41 using both the BSE-1 and BSE-2 earthquake hazard levels and the corresponding performance levels shown in Table 101.4.7.5.1.

TABLE 101.4.7.5.1
PERFORMANCE CRITERIA FOR IBC
LEVEL SEISMIC FORCES

OCCUPANCY CATEGORY (Based on IBC Table 1604.5)	PERFORMANCE LEVEL FOR USE WITH ASCE 41 BSE-1 EARTHQUAKE HAZARD LEVEL	PERFORMANCE LEVEL FOR USE WITH ASCE 41 BSE-2 EARTHQUAKE HAZARD LEVEL
I	Life safety (LS)	Collapse prevention (CP)
II	Life safety (LS)	Collapse prevention (CP)
III	Note a	Note a
IV	Immediate occupancy (IO)	Life safety (LS)

a. Acceptable criteria for Occupancy Category III shall be taken as 80 percent of the acceptance criteria specified for Occupancy Category IV performance levels.

101.4.7.5.2. Compliance with reduced IBC level seismic forces. Where seismic evaluation and design is permitted to meet reduced International Building Code seismic force levels, the procedures used shall be in accordance with one of the following:

1. The International Building Code using 75 percent of the prescribed forces. Values of R, Ω_0 and C_d used for analysis shall be as specified in Section 101.4.7.5.1 of this code.

2. Structures or portions of structures that comply with the requirements of the applicable chapter in Appendix A as specified in Items 2.1 through 2.5 shall be deemed to comply with this section.

   2.1 The seismic evaluation and design of unreinforced masonry bearing wall buildings in Occupancy Category I or II are permitted to be based on the procedures specified in Appendix Chapter A1.

   2.2 Seismic evaluation and design of the wall anchorage system in reinforced concrete and reinforced masonry wall buildings with flexible diaphragms in Occupancy Category I or II are permitted to be based on the procedures specified in Chapter A2.

2.3 Seismic evaluation and design of cripple walls and sill plate anchorage in residential buildings of light-frame wood construction in Occupancy Category I or II are permitted to be based on the procedures specified in Chapter A3.

2.4 Seismic evaluation and design of soft, weak, or open-front wall conditions in multiunit residential buildings of wood construction in Occupancy Category I or II are permitted to be based on the procedures specified in Chapter A4.

2.5 Seismic evaluation and design of concrete buildings and concrete with masonry infill buildings in all occupancy categories are permitted to be based on the procedures specified in Chapter A5.

3. Compliance with ASCE 31 based on the applicable performance level as shown in Table 101.4.7.5.2. It shall be permitted to use the BSE-1 earthquake hazard level as defined in ASCE 41 and subject to the limitations in Item 4 below.

4. Compliance with ASCE 41 using the BSE-1 Earthquake Hazard Level and the performance level shown in Table 101.4.7.5.2. The design spectral response acceleration parameters S_{XS} and S_{X1} specified in ASCE 41 shall not be taken less than 75 percent of the respective design spectral response acceleration parameters S_{DS} and S_{D1} defined by the International Building Code.

TABLE 101.4.7.5.2
PERFORMANCE CRITERIA FOR IBC
LEVEL SEISMIC FORCES

OCCUPANCY CATEGORY (Based on IBC Table 1604.5)	PERFORMANCE LEVEL FOR USE WITH ASCE 31	PERFORMANCE LEVEL FOR USE WITH ASCE 41 BSE-1 EARTHQUAKE HAZARD LEVEL
I	Life safety (LS)	Life safety (LS)
II	Life safety (LS)	Life safety (LS)
III	Note a, b	Note a
IV	Immediate occupancy (IO)	Life safety (LS)

a. Acceptable criteria for Occupancy Category III shall be taken as 80 percent of the acceptance criteria specified for Occupancy Category IV performance levels.

b. For Occupancy Category III, the ASCE 31 screening phase checklists shall be based on the life safety performance level.

101.4.8. Energy conservation code. The provisions of the International Energy Conservation Code shall apply to the construction, alteration, movement, enlargement, replacement, repair and equipment of residential and commercial buildings.

EXCEPTIONS:

a. Except as specified in this chapter, this code shall not be used to require the removal, alteration or abandonment of, nor prevent the continued use and maintenance of, an existing building or building system lawfully in existence at the time of adoption of this code.

b. Any building or structure that is listed in the State or National Register of Historic Places; designated as a historic property under local or state designation law or survey; certified as a contributing resource with a National Register listed or locally designated historic district; or with an opinion or certification that the property is eligible to be listed on the National or State Registers of Historic Places either individually or as a contributing building to a historic district by the State Historic Preservation Officer or the Keeper of the National Register of Historic Places, are exempt from this code.

c. Detached one- and two-family dwellings and multiple single-family dwellings (townhouses) not more than three stories above grade plane in height with separate means of egress and their accessory structures shall be permitted to comply with the International Residential Code.

d. Existing buildings undergoing repair, alteration or additions and change of occupancy shall be permitted to comply with the International Existing Building Code.

101.4.8.1. Additions, alterations, renovations or repairs. Additions, alterations, renovations or repairs to an existing building, building system or portion thereof shall conform to the provisions of this code as they relate to new construction without requiring the unaltered portion(s) of the existing building or building system to comply with this code. Additions, alterations, renovations or repairs shall not create an unsafe or hazardous condition or overload existing building systems. An addition shall be deemed to comply with this code if the addition alone complies or if the existing building and addition comply with this code as a single building.

EXCEPTIONS: The following need not comply provided the energy use of the building is not increased:

1. Storm windows installed over existing fenestration.

2. Glass only replacements in an existing sash and frame.

3. Existing ceiling, wall or floor cavities exposed during construction provided that these cavities are filled with insulation.

4. Construction where the existing roof, wall or floor cavity is not exposed.

5. Reroofing for roofs where neither the sheathing nor the insulation is exposed. Roofs without insulation in the cavity and where the sheathing or insulation is exposed during reroofing shall be insulated either above or below the sheathing.

6. Replacement of existing doors that separate conditioned space from the exterior shall not require the installation of a vestibule or revolving door, provided, however, that

an existing vestibule that separates a conditioned space from the exterior shall not be removed.

7. Alterations that replace less than 50 percent of the luminaires in a space provided that such alterations do not increase the installed interior lighting power.

8. Alterations that replace only the bulb and ballast within the existing luminaires in a space provided that the alteration does not increase the installed interior lighting power.

101.4.8.2. Change in occupancy or use. Spaces undergoing a change in occupancy that would result in an increase in demand for either fossil fuel or electrical energy shall comply with this code. Where the use of a space changes from one use to another use in Table 505.5.2 the installed lighting wattage shall comply with Section 505.5.

101.4.8.3. Change in space conditioning. Any non-conditioned space that is altered to become conditioned space shall be required to be brought into full compliance with this code.

101.4.8.3. Mixed occupancy. Where a building includes both residential and commercial occupancies, each occupancy shall be separately considered and meet the applicable provisions of Chapter 4 for residential and Chapter 5 for commercial.

101.4.8.4. Compliance and compliance materials. Residential buildings shall meet the provisions of Chapter 4. Commercial buildings shall meet the provisions of Chapter 5. The code official shall be permitted to approve specific computer software, worksheets, compliance manuals and other similar materials that meet the intent of this code.

101.4.8.5. Low energy buildings. The following buildings, or portions thereof, separated from the remainder of the building by building thermal envelope assemblies complying with this code shall be exempt from the building thermal envelope provisions of this code:

a. Those with a peak design rate of energy usage less than 3.4 Btu/h • ft^2 (10.7 W/m^2) or 1.0 watt/ft^2 (10.7 W/m^2) of floor area for space conditioning purposes.

b. Those that do not contain conditioned space.

101.5. Appendices. Provisions in the appendices of the technical codes shall not apply unless specifically adopted.

101.6. Safeguards during construction. All construction work covered in the technical codes, including any related demolition, shall comply with the requirements of IEBC Chapter 14 for existing buildings and IBC Chapter 33 for new buildings.

101.7. Definitions. Unless otherwise expressly stated, the following words and terms shall have the meanings as shown in this Chapter. Definitions located in the technical codes are hereby incorporated into this Chapter.

Building – any structure used or intended for supporting or sheltering any use or occupancy.

Building, existing – a building erected prior to the adoption of this chapter or one for which a legal certificate of occupancy has been issued for at least one year.

Building official - the officer or other designated authority charged with the administration and enforcement of this chapter and the technical codes, or a regularly authorized deputy or other designee. When the term or title administrative authority, building official, building inspector, code official, gas inspector, plumbing inspector, mechanical inspector or other similar designation is used in this chapter or in any of the technical codes, it shall be construed to mean the building official.

Building service equipment – the plumbing, mechanical, electrical and elevator equipment including piping, wiring, fixtures and other accessories which provide sanitation, lighting, heating, ventilation, cooling, refrigeration, fire-fighting and transportation facilities essential to the occupancy of the building or structure for its designated use.

Jurisdiction – the City of Tempe, Arizona.

Owner – the person, agent, firm or corporation with legal or equitable interest in a property.

Permit – the official document issued by the building official authorizing performance of a specified, legal activity.

Shall – as used in this chapter and the technical codes is mandatory.
(Ord. No. 2011.33, 9-22-11; Ord. No. O2014.14, 3-20-14)

Sec. 8-102. Applicability.

102.1. General. This Chapter and the technical codes shall apply to, and shall govern, permit applications received on or after the effective date of the adopting ordinance, except as allowed by that ordinance.

102.2. Conflicting provisions. When conflicting provisions or requirements occur between this Chapter, the technical codes and other codes or laws, the most restrictive provisions shall govern. When conflicts occur between the technical codes, those provisions providing the greater safety to life as determined by the building official and the fire marshal shall govern.

In other conflicts where sanitation, life safety or fire safety are not involved, the most restrictive provisions shall govern. Where in a specific case different sections of the technical codes specify different materials, methods of construction or other requirements, the most restrictive shall govern. When there is a conflict between a general requirement and a specific requirement, the specific requirement shall be applicable.

102.3. Other laws. The provisions of this chapter and the technical codes shall not be deemed to nullify any provisions of the Tempe City Code, state or federal laws.

102.4. Application of references. References to chapter or section numbers, or to provisions not specifically identified by number, shall be construed to refer to such chapter, section or provision of this chapter or the technical codes.

102.5. Referenced codes and standards. The codes and standards referenced in this chapter or the technical codes shall be considered part of the requirements of this chapter and the technical codes to the prescribed extent of each reference. Where differences occur between provisions of this chapter or the technical codes and the referenced codes and standards, the provisions of this chapter and the technical codes shall apply.

EXCEPTION: Where enforcement of a code provision would violate the conditions of the listing equipment or appliance, the condition of the listing and manufacturer's instructions shall apply.

102.6. International codes references. Within the technical codes and the referenced codes and standards therein, specific references to the following International Codes shall be deemed and interpreted to mean the specific City of Tempe codes as listed herein:

1. International Building Code
2. International Residential Code for One- and Two-Family Dwellings
3. National Electrical Code
4. International Plumbing Code
5. International Mechanical Code
6. International Fuel Gas Code
7. International Existing Building Code
8. International Energy Conservation Code

102.7. Partial invalidity. In the event any part or provision of this chapter or the technical codes is held to be invalid, illegal, unconstitutional or void, such ruling shall not affect the validity of the remaining portions of this chapter or the technical codes.

102.8. Additions, alterations and repairs. Additions, alterations or repairs may be made to a building or its building service equipment without requiring the existing building or its building service equipment to comply with all the requirements of this Chapter and the technical codes, provided the addition, alteration or repair conforms to the requirements for a new building or building service equipment. Refer to Section 101.4.7, for additional options governing additions, alterations and repairs.

102.9. Existing buildings or structures. The legal occupancy of any building or structure existing on the date of the adoption of this Chapter shall be permitted to continue without change, provided such continued use is not dangerous to life, health and safety as determined by the building official.

102.10. Maintenance. Buildings, structures and building service equipment, existing and new, and parts thereof shall be maintained in a safe and sanitary condition. Devices or safeguards, required by the technical codes, shall be maintained in conformance with the technical code under which installed. The owner or the owner's designated agent shall be responsible for the maintenance of building structures and their building service equipment. To determine compliance with this section, the building official may cause a structure to be re-inspected.

102.11. Moved buildings. Buildings, structures and their building service equipment moved into or within this jurisdiction shall comply with the provisions of the technical codes for new buildings or structures and their building service equipment.

102.12. Historic buildings. Repairs, alterations and additions necessary for the preservation, restoration, rehabilitation or continued use of a building, structure, or its building service equipment may be made without conforming to the requirements of the technical codes when authorized by the Building Code Advisory Board of Appeals, provided:

1. The building or structure has been designated by official action of the legally constituted authority of this jurisdiction as having special historical or architectural significance; and

2. Unsafe conditions as described in this chapter are corrected; and

3. The restored building or structure and its building service equipment will be no more hazardous based on life safety, fire-safety and sanitation than the existing building as determined by the building official.

EXCEPTION: Repairs, alterations and additions necessary for the preservation, restoration, rehabilitation or continued use of a building, structure, or its building service equipment shall be permitted to comply with the provisions of the International Existing Building Code.

(Ord. No. 2011.33, 9-22-11)

Sec. 8-103. Duties and powers of building official.

103.1. General. There is hereby established a code enforcement agency of the Community Development Department of the City of Tempe known as the Building Safety Division under the administrative and operational charge of the building official.

103.2. Duties and powers. The building official is hereby authorized and directed to enforce the provisions of this Chapter and technical codes. The building official shall have the authority to render interpretations of this Chapter and the technical codes and to adopt policies and procedures in order to clarify the application of their provisions. Such interpretations, policies and procedures shall be in compliance with the intent and purpose of this Chapter and the technical codes. Such policies and procedures shall not have the effect of waiving requirements specifically provided for in this Chapter or the technical codes.

103.3. Deputies. In accordance with any applicable City procedures, and with the concurrence of the Community Development Director, the building official shall have the authority to appoint technical officers, inspectors, plan examiners and other employees. Such employees shall have powers as delegated by the building official.

103.4. Applications and permits. The building official shall receive applications, review construction documents and issue permits for the erection, and alteration, demolition and moving of buildings, structures, and building service equipment, inspect the premises where such permits have been issued and enforce compliance with the provisions of this Chapter and the technical codes.

103.5. Notices and orders. The building official shall issue all necessary notices or orders to ensure compliance with this chapter and the technical codes.

103.6. Inspections. The building official shall make all of the required inspections, or the building official shall have the authority to accept reports of inspection by approved agencies or individuals. Reports of such inspections shall be in writing and be certified by a responsible officer of such approved agency or by the responsible individual. The building official is authorized to engage such expert opinion as deemed necessary to report upon unusual technical issues that arise.

103.7. Identification. The building official and authorized deputies shall carry proper identification when inspecting structures or premises or otherwise in the performance of duties under this chapter or the technical codes.

103.8. Right of entry. Where it is necessary to make an inspection to enforce the provisions of this Chapter or the technical codes, or where the building official has reasonable cause to believe there exists in a structure or upon a premises a condition contrary to or in violation of this Chapter or the technical codes making the structure or premises unsafe, dangerous or hazardous, the building official is authorized to enter the structure or premises at reasonable times to inspect or to perform the duties imposed by this Chapter or the technical codes, provided that if such structure or premises be occupied that credentials be presented to the occupant and entry requested. If such structure or premises is unoccupied, the building official shall first make a reasonable effort to locate the owner or other person having charge or control of the structure or premises and request entry. If entry is refused, the building official shall have recourse to the remedies provided by law to secure entry.

103.9. Department records. The building official shall keep official records of applications received, approved plans, permits and certificates issued, fees collected, reports of inspections, and notices and orders issued. Such records shall be retained in the official records for the period required for retention in the division's approved retention schedule.

103.10. Liability. The building official, members of the board of appeals or any employee charged with the enforcement of this Chapter or technical codes, while acting for the jurisdiction in good faith and without malice in the discharge of the duties required by this chapter, technical codes or other pertinent law or ordinance, shall not thereby be rendered liable personally and is hereby relieved from personal liability for any damage accruing to persons or property as a result of any act or by reason of an act or omission in the discharge of official duties. Any suit instituted against an officer or employee in the lawful discharge of duties and under the provisions of this chapter or technical codes shall be defended by legal representative of the jurisdiction until the final termination of the proceedings. The building official or any subordinate shall not be liable for cost in any action, suit or proceeding that is instituted in pursuance of the provisions of this chapter or technical codes.

103.11. Approved materials and equipment. Materials, equipment and devices approved by the building official shall be constructed and installed in accordance with such approval.

103.11.1. Used materials and equipment. The use of used materials meeting the requirements of this chapter or the technical codes for new materials is permitted. Used equipment and devices shall not be reused unless approved by the building official.

103.12. Modifications. Wherever there are practical difficulties involved in carrying out the provisions of this Chapter or the technical codes, the building official shall have the authority to grant modifications for individual cases, upon application of the owner or owner's

representative, provided the building official shall first find that special individual reason makes the strict letter of the codes impractical and the modification is in compliance with the intent and purpose of this Chapter and the technical codes and that such modification does not lessen health, accessibility, life and fire safety, or structural requirements. The details of action granting modifications shall be recorded and entered in the files of the Building Safety Division. Requests for modifications must be submitted to the building official in writing along with all supporting documentation and the applicable fee as shown in table 2-A (see Appendix A).

103.13. Alternative materials, design and methods of construction and equipment. The provisions of this Chapter and the technical codes are not intended to prevent the installation of any material or to prohibit any design or method of construction not specifically prescribed by this Chapter or the technical codes, provided any such alternative is approved by the building official. An alternative material, design or method of construction may be approved where the building official finds the proposed design is satisfactory and complies with the intent of the provisions of this Chapter and the technical codes, and the material, method or work offered is, for the purpose intended, at least the equivalent of that prescribed in this Chapter and the technical codes in quality, strength, effectiveness, fire resistance, durability and safety. Records of alternative materials, design and methods of construction approvals shall be recorded and entered in the files of the Building Safety Division. Requests for alternative materials, design, and methods of construction must be submitted to the Building Official in writing along with all supporting documentation and the applicable fee as shown in Table 2-A (see Appendix A).

103.13.1. Research reports. Supporting data, where deemed necessary to assist in the approval of materials or assemblies not specifically provided for in this chapter or the technical codes shall be provided and shall consist of valid research reports from approved sources.

103.13.2. Tests. Whenever there is insufficient evidence of compliance with the provisions of this Chapter or the technical codes, or evidence a material or method does not conform to the requirements of this Chapter or the technical codes, or in order to substantiate claims for alternative materials or methods, the building official shall have the authority to require tests as evidence of compliance to be made at no expense to the City. Test methods shall be as specified in this Chapter or the technical codes or by other recognized test standards. In the absence of recognized and accepted test methods, the building official may approve the testing procedures. Tests shall be performed by an approved agency. Reports of such tests shall be retained by the building official for the period required in the Building Safety Division's approved record retention schedule.

103.14. Stop work orders. Whenever the building official finds any work regulated by this Chapter or the technical codes being performed in a manner either contrary to the provisions of this Chapter or the technical codes or dangerous or unsafe, the building official is authorized to issue a stop work order.

103.14.1. Issuance. The stop work order shall be in writing and shall be given to the owner of the property involved, or to the owner's agent, or to the person doing the work. Upon issuance of a stop work order, the cited work shall immediately cease. The stop work order shall state the reason for the order, and the conditions under which the cited work will be permitted to resume.

103.14.2. Unlawful continuance. Any person who shall continue any work after having been served with a stop work order, except such work as that person is directed to perform to

remove a violation or unsafe condition, shall be subject to penalties as prescribed by this chapter and the law.

103.14.3. Appeals. Any person aggrieved by a stop work order issued by the building official may appeal such stop work order to the appropriate technical codes board of appeals in accordance with the requirements of this chapter.

103.15. Occupancy violations. When a building or structure or building service equipment therein regulated by this Chapter and the technical codes is being used contrary to the provisions of such codes, the building official may order such use discontinued by written notice served on any person causing such use to be continued. Such person shall, after receipt of notice, discontinue the use within the time prescribed by the building official and make the building, structure, or portion thereof, comply with the requirements of such codes.

103.16. Authority to disconnect utilities. The building official shall have the authority to authorize disconnection of utility service or energy supplied to a building, structure or building service equipment therein regulated by this Chapter or the technical codes, in case of emergency, where necessary to eliminate an immediate or immanent hazard to life or property. The building official shall notify the serving utility, and wherever possible the owner and occupant of the building, structure or building service equipment of the decision to disconnect prior to taking such action. If not notified prior to disconnecting, the owner or occupant of the building, structure or building service equipment shall be notified in writing, as soon as practical thereafter.

103.16.1 The building official shall have the authority to authorize the disconnection of any utility service or energy supplied to a building, structure or service equipment in situations that are deemed to pose a probably or possible hazard to life or property, or when such connection has been made without the approval required by Section 106.10.

103.17. Authority to condemn building service equipment. When the building official determines that building service equipment regulated in the technical codes has become hazardous to life, health or property, or has become unsanitary, the building official shall order in writing that such equipment either be removed or restored to a safe or sanitary condition, as appropriate. The written notice shall fix a time limit for compliance with such order. Defective building service equipment shall not be used, operated or maintained after receiving such notice.

103.17.1. When such equipment or installation is to be disconnected, a written notice of such disconnection and causes therefore shall be given within 24 hours to the serving utility, the owner and occupant of such building, structure or premises.

103.17.2. When any building service equipment is used, operated or maintained in violation of the technical codes and in violation of a notice issued pursuant to the provisions of this section, the individual or individuals responsible for continued use, operation or maintenance shall be subject to the penalties described in this Chapter and the building official shall institute appropriate action to prevent, restrain, correct or abate the violation.

103.18. Connection after order to disconnect. Persons shall not make connections from an energy, fuel or power supply nor supply energy or fuel to building service equipment that has been disconnected or ordered to be disconnected or the use has been ordered to be discontinued

by the building official until the building official authorizes the reconnection and use of such equipment.
(Ord. No. 2011.33, 9-22-11)

Sec. 8-104. Permits.

104.1. Required. Any owner or authorized agent who intends to construct, enlarge, alter, repair, move, demolish, or change the occupancy of a building or structure, or to erect, install, enlarge, alter, repair, remove, convert or replace any electrical, gas, mechanical or plumbing system, the installation of which is regulated by this Chapter or the technical codes, or to cause such work to be done, shall first make application to the building official and obtain the required permit or permits.

EXCEPTIONS:

1. Governmental entities that are, as a matter of law, immune from having to obtain a permit.

2. Annual permit holder.

3. Annual utilities permit.

4. Registered industrial plant.

104.2. Work exempt from permit. Exemptions from permit requirements of this Chapter shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this Chapter or the technical codes or any other laws or ordinances of the City. Permits shall not be required for the following:

104.2.1. Building permits. A building permit shall not be required for the following:

a. Radio and television antennae towers or light standards not exceeding 35 feet in height.

b. Works of art not over seven feet (2134 mm) in height and their foundation and supporting structure, provided that no part of which is intended to be occupied or used as shelter.

c. One-story detached accessory structures ancillary to R-3 and R-4 occupancies used as tool and storage sheds, playhouses and similar uses, provided the floor area does not exceed 200 square feet (18.60 m^2).

d. Fences not more than seven feet (2134 mm) high.

e. Oil derricks.

f. Retaining walls which are not over four feet (914 mm) in height measured from the bottom of the footing to the top of the wall, provided the retaining wall is not supporting a surcharge, is not impounding Class I, II or III-A liquids.

g. Water tanks supported directly on grade if the capacity does not exceed 5,000 gallons (18925 L) and the ratio of height to diameter or width does not exceed 2 to 1.

h. Sidewalks and driveways not more than 30 inches (762 mm) above grade and not over any basement or story below and not part of an accessible route.

i. Painting, papering, tiling, carpeting, cabinets, counter tops and similar finish work.

j. Temporary motion picture, television and theater stage sets and scenery.

k. Prefabricated swimming pools accessory to detached one- and two-family dwellings, which are less than 24 inches (610 mm) deep, do not exceed 5,000 gallons (18925 L) and are installed entirely above ground.

l. Shade membrane structures constructed for nursery or agricultural purposes not including service systems. Membrane and shade lattice structures, which do not exceed 200 square feet (18.60 m^2), accessory to Group R-3 occupancies or individual dwelling units in Group R-2 occupancies located within the setbacks as allowed by the zoning ordinance.

m. Swings and other playground equipment.

n. Window awnings supported by an exterior wall projecting not more than 54 inches (1372 mm) from the exterior wall, no closer than three feet from a property line, and not requiring additional support in detached one- and two-family dwellings and Group U occupancies.

o. Movable cases, counters and partitions not over five feet, nine inches (1753 mm) in height.

p. Replacement roof covering, provided the replacement roof covering classification is equal to or greater than the existing roofing classification; the new roof covering does not increase the loads imposed upon the roof structural frame beyond the original design capacity and not more than two full sheets or 64 square feet of roof sheathing is replaced.

q. Listed, light-gage, pre-manufactured metal (only) patio covers and awnings as an accessory to Group R-3 occupancies or individual dwelling units in Group R-2 occupancies located within the setbacks as allowed by the zoning ordinance. Listings must be applicable to the current edition of the Tempe Building Code.

r. Temporary stages, platforms, bleachers, grandstands and similar structures constructed for use during special events pursuant to special events permit. (See Tempe City Code Section 5-2.)

s. Temporary soil or structural shoring to be used during building construction, remodel or repair.

t. Special cases as allowed by the building official.

104.2.2. Electrical permits. An electrical permit shall not be required for the following:

a. Portable motors or other portable appliances energized by means of a cord or cable having an attachment plug end to be connected to an approved receptacle when that cord or cable is permitted by the Electrical Code.

b. Repair or replacement of fixed motors, transformers or fixed approved appliances of the same type and rating in the same location.

c. Temporary decorative lighting.

d. Repair or replacement of current-carrying parts of any switch, contactor, metering or control device within the original enclosure, using original manufacturer's equipment parts or listed equivalent replacement parts.

e. Replacement of flush or snap switches, fuses, lamps sockets, luminaries, receptacles and other minor maintenance and repair work, but not the outlets therefore.

f. Repair or replacement of any over current device of the same required capacity in the same location.

g. Repair or replacement of electrodes or transformers of the same size and capacity for signs or gas tube systems.

h. Taping joints.

i. Removal of electrical wiring.

j. Temporary wiring for experimental purposes in suitable experimental laboratories.

k. The wiring for temporary theater, motion picture or television stage sets.

l. Electrical wiring, devices, appliances, apparatus or equipment, not install in a hazardous locations, as defined in Article 500, operating at less than 25 volts and not capable of supplying more than 50 watts of energy.

m. Low-energy power, control and signal circuits of Class II and Class III as defined in the Electrical Code not install in a hazardous locations, as defined in Article 500.

n. Installation, alteration or repair of electrical wiring, apparatus or equipment or the generation, transmission, distribution or metering of electrical energy or in the operation of signals or the transmission of intelligence by a public or private utility in the exercise of its function as a serving utility.

o. Installation of portable generators for use during temporary special events under a City of Tempe Special Events Permit. (See Tempe City Code, § 5-2.)

p. Lighting fixtures and conductors within or on a sign regulated by the Zoning and Development Code.

q. Neon lighting that is part of a plug and cord connected self-contained sign or part of a pre-manufactured piece of sign equipment.

r. An electrical permit is not required for the installation of an approved temporary metered power outlet that has been supplied and installed by an electric utility.

(FPN:) a temporary metered power outlet is a device, designed to be installed in the electric utility meter socket that provides metered electrical power to receptacles mounted on or in the device, for the purpose of providing temporary construction power to a residential building. Such devices may not energize the meter socket, lugs or equipment on the customer's side of the meter socket. The temporary metered power outlet shall be an approved device with an AIC rating higher than the available fault current provided at the meter.

Such devices may be installed on residential buildings when a valid building permit has been issued, provided that the structural integrity and weather resistive barrier is maintained at the panel location, or the installation is detailed on the approved building plans. This exemption from permitting does not prohibit or limit the authority having jurisdiction from directing the electrical utility to disconnect the temporary metered power outlet in accordance with Section 103.16 of this code.

104.2.3. Fuel gas permits. A fuel gas permit shall not be required for the following:

a. Portable heating appliance.

b. Replacement of any minor part that does not alter approval of equipment or make such equipment unsafe.

c. Replacement of gas water heating appliances in the same location of equal or less Btu/cfh rating and minor modification to electrical, plumbing, and mechanical connections necessary to serve the new appliance in R2, R3, and R4 occupancies where the appliance serves an individual dwelling unit, provided the serving Gas Utility is notified prior to the appliance being energized.

d. Replacement of gas pool and spa heating appliances in the same location of equal or less Btu/cfh rating, and minor modification to electrical, plumbing, and mechanical connections necessary to serve the new appliance in R2, R3, and R4 occupancies where the pool or spa serves an individual dwelling unit, provided the serving Gas Utility is notified prior to the appliance being energized.

e. Replacement of gas air-conditioning units, direct-vented appliances, furnaces, and log lighters in the same location, of equal or less Btu/cfh, and minor modification to electrical, plumbing, and mechanical connections necessary to serve the appliance in R1, R2, R3, and R4 occupancies where the appliance serves an individual dwelling unit, provided the serving Gas Utility is notified prior to the appliance being energized.

104.2.4. Mechanical permits. A mechanical permit shall not be required for the following:

a. Portable heating appliance.

b. Portable ventilation equipment.

c. Portable cooling unit.

d. Steam, hot or chilled water piping within any heating or cooling equipment regulated by International Mechanical Code.

e. Replacement of any part not altering its approval or making it unsafe.

f. Portable evaporative cooler.

g. Self-contained refrigeration system containing 10 pounds (4.54 kg) or less of refrigerant and actuated by motors of 1 horsepower (746 W) or less.

h. Portable fuel cell appliances that are not connected to a fixed piping system and are not interconnected to a power grid.

i. Replacement of an air conditioner unit, furnace, heat pump or evaporative cooler in the same location of equal or less cfm and amperage rating and minor modification to electrical, plumbing, and mechanical connections necessary to serve the new appliance in R2, R3, and R4 occupancies, where the appliance serves an individual dwelling unit, and A2, A3, A4, B, E, F, M, S, and U occupancies where the appliance serves an individual tenant space and where located outside in conformance with the mechanical screening requirements of the Zoning and Development Code.

104.2.5. Plumbing permits. A plumbing permit shall not be required for the following:

a. Stopping of leaks in drains, water, soil, waste or vent pipe, when such work does not require the removal and replacement of pipe, fittings, valves or fixtures.

b. Clearing of stoppages or the repairing of leaks in pipes, valves or fixtures.

c. Replacement of electric water heating appliances in the same location of equal or less amperage rating, and minor modification to electrical, plumbing, and mechanical connections to serve the appliance in R2, R3, and R4 occupancies, where the appliance serves an individual dwelling unit.

d. Equal replacement of boilers and water heaters in the same location regulated by the State of Arizona, except not including work not in the scope of State regulation in industries, premises or activities regulated by Tempe City Code, Chapters 33, Article V & Chapter 27, Article I.

e. Replacement installation of potable water conditioning or treating appliances in the same location, and minor modification to electrical, plumbing, and mechanical connections necessary to serve the appliance in R2, R3 and R4 occupancies, where the appliance serves an individual dwelling unit.

f. Replacement installation of potable water conditioning or treating appliances in the same location, and minor modification to electrical, plumbing, and mechanical connections necessary to serve the appliance in A2, A3, A4, B, E, F, M, S, and U

occupancies where the appliance serves an individual tenant space, not including industries, premises or activities regulated by Tempe City Code, Chapters 33, Article V & Chapter 27, Article I.

g. Replacement installation of solar domestic water heating appliances in the same location, and minor modification to electrical, plumbing, and mechanical connections necessary to serve the appliance in R3 and R4 occupancies, where the appliance serves an individual dwelling unit.

h. Replacement installation of solar pool and spa heating appliances in the same location and minor modification to electrical, plumbing, and mechanical connections necessary to serve the new appliance in R3 and R4 occupancies, where the pool or spa serves an individual dwelling unit.

104.2.6. Fuel Gas permits. A fuel gas permit shall not be required for the following:

a. Portable heating appliance.

b. Replacement of any minor component of an appliance or equipment that does not alter approval of such appliance or equipment or make such appliance or equipment unsafe.

104.3. Emergency repairs. Where equipment replacements and repairs requiring a permit must be performed in an emergency situation, the permit application shall be submitted within the next working business day.

104.4. Ordinary repairs. Application or notice to the building official is not required for ordinary repairs to structures, replacement of lamps or the connection of approved portable electrical equipment to approve permanently installed receptacles. Such repairs shall not include the cutting away of any wall, partition or portion thereof, the removal or cutting of any structural beam or load-bearing support, or the removal or change of any required means of egress, or rearrangement of parts of a structure affecting the egress requirements; nor shall ordinary repairs include addition to, alteration of, replacement or relocation of any standpipe, water supply, sewer, drainage, drain leader, gas, soil, waste, vent or similar piping, electrical wiring or mechanical or other work affecting public health or general safety.

104.5. Public service agencies. A permit shall not be required for the installation, alteration or repair of generation, transmission, distribution or metering or other related equipment under the ownership and control of public service agencies by established right.

Nothing in this section shall be construed to exempt any electrical installation used for lighting, power, heating, ventilation, elevators pumping or for other building or premise operations, nor exempt any service equipment for electrical service to a building or premise.

104.6. Charge accounts and bonds. Any person, firm, corporation or political subdivision may elect to pay permit and inspection fees on a monthly charge account basis, provided he has first filed with the building official a bond for the benefit of the city in the sum of $1,000.

The bond shall be executed by said person, firm, corporation or political subdivision and by a surety company maintaining an agency in the state or, in lieu thereof, the bond shall be in

writing on a form to be provided by the city and accomplished by a deposit of cash in the amount of $1,000. All bonds shall be conditioned that the person named herein shall pay, within 45 days of issuance of any electrical, mechanical, plumbing or gas permit, all permit and inspection fees accrued under Section 104.1. Said bond shall be nontransferable.

104.6.1. Payment. Permit and inspection fee charges accrued during each month shall be promptly remitted to the city after issuance of the permit, or as often during the month as the accrued charges equal the value of the bond or cash deposit. If any person, firm, corporation or political subdivision fails or refuses to pay such accrued permit and inspection fees by the fifteenth day of the following month after issuance of the permit the building official may refuse any further applications for permit and may refuse to inspect any work for which permit fees have not been paid.

104.7. Annual permits.

104.7.1. Scope. Any person, firm or corporation employing a person who holds a valid maintenance electrician or plumber's certificate of registration may obtain an annual permit in lieu of separate permits for additions, alterations, repair or maintenance of electrical and plumbing systems or equipment on the premises owned or occupied by said person, firm or corporation.

104.7.2. Work report. A list of all additions and alterations not generally regarded as maintenance shall be prepared by the person who holds the maintenance certificate of registration, and submitted monthly to the building official together with any plans or working drawings

104.8. Maintenance electrician or plumber.

104.8.1. Maintenance electrician or plumber, defined. For the purpose of this code, a maintenance electrician or plumber is a person who performs or supervises alteration, repair or maintenance of electrical or plumbing systems and equipment in, or about, buildings, structures or premises and holds a valid maintenance electrician's or plumber's certificate of registration issued by the city.

104.8.2. Maintenance electrician's or plumber's certificate of registration. Persons may obtain a maintenance certificate of registration as follows:

1. Any employer may elect to appoint one or more full-time maintenance electricians or plumbers to perform or supervise the alteration, repair or maintenance of electrical wiring and equipment or plumbing system and fixtures in or about buildings, structures or premises owned or occupied by the employer.

2. Every person desiring to hold or renew a maintenance certificate of registration shall make application with the building official on a form furnished by the city for that purpose.

3. Every person applying for a maintenance certificate of registration shall pay to the city a fee as prescribed in Table 2-A at the time of application. No portion of any fee shall be returned either upon failure to qualify, or upon revocation of certification, or for any other cause.

4. Every person applying for a maintenance certificate of registration shall undergo such examination as to qualifications and competency to alter, repair or maintain electrical or plumbing systems and equipment as the building official shall direct; provided, however, that the examination shall relate exclusively to the trade or vocation of the desired certificate.

5. Every person applying for the renewal of a maintenance certificate of registration shall undergo an examination as to verify the applicants' qualifications and competency relative to the Tempe code provisions as adopted at the time of application. The renewal exam will be administered as an open book exam whereby the exam will be sent to the applicant along with the annual renewal form and a copy of Tempe's code amendments. A grade of at least 75 percent is required to qualify for registration renewal. Renewal applicants whose initial exam was based on the current electrical/plumbing code edition need not complete the renewal exam.

6. Every applicant shall have an examination grade or standing of at least 75 percent in order to be entitled to a maintenance certificate of registration. The building official shall, within five days after the grades have been determined, notify each applicant of the grade and whether or not they passed the examination.

7. Any person who fails to pass an examination for a maintenance certificate of registration may apply for re-examination after the expiration of 30 days without payment of additional fees. Should such person fail to pass an examination the second time, the building official shall refuse a third application until after the expiration of six months. After six months, such person is permitted to reapply and shall pay the regular examination fee.

8. A maintenance certificate of registration shall be issued to every person who makes application for such certificate, pays the required fee, and successfully passes the examination. It is further provided that a maintenance electrician or plumber need not hold an electrical or plumber contractor's license issued by the state.

9. Any maintenance certificate of registration issued hereunder shall be subject to suspension or revocation by the building official for failure to alter, repair or maintain electrical wiring or equipment or plumbing systems and fixtures in compliance with the appropriate code.

10. Unless earlier suspended or revoked for cause, all maintenance certificates or registration issued by the city shall expire on March 1 of each year and may be renewed for the following year upon receipt of application and the payment of a fee to the city on or before March 1 of each year. Applications for renewal must include completed renewal exams as specified in Item #5.

11. A maintenance certificate of registration shall become void in the event that said holder of a maintenance certificate shall cease to act as the maintenance person for the employer specified in the application for such certificate.

12. Any person holding a maintenance certificate of registration shall notify building official within five days of the termination of employment with the employer specified in the application for such certificate.

13. Certificates of registration are not transferable from one person to another, and the lending of any certificate of registration or obtaining of permits thereunder for any other person shall be deemed cause for revocation of same.

104.9.3. Appeal. Any person who is denied a certificate of registration and wishes to obtain a review of the determination made by the building official shall, within ten days after notification of denial of a certificate of registration, file an application for hearing before the appropriate code advisory board of appeals with the secretary of the board stating the reasons for said appeal. It shall be the duty of the secretary to notify the chairman of the board of the appeal.

The applicant shall be notified to appear and meet with the board for a hearing on said appeal at such time and place as the board shall direct but not more than 25 days after the application for rehearing is filed. If the board reaffirms the denial of a certificate of registration, the applicant shall be notified of said denial within five days following the date of rehearing.

An advisory board of appeals shall have the authority to restrict, revoke or temporarily suspend any maintenance certificate of registration granted hereunder for good cause shown for any of the following reasons:

1. If a certificate of registration was obtained by fraud or misrepresentation.

2. If any reason exists which would have been cause for denial of such certificate of registration.

3. For negligently or willfully violating the provisions of this article or for refusal to correct such violations.

4. For repeated violations of this section.

5. For permitting any other person to use such certificate of registration or to perform any act or work of the kind authorized by such certificate for the purpose of avoiding compliance with this article.

The action to restrict, revoke or temporarily suspend any certificate of registration may be commenced upon request of the building official, or upon motion and presentation of cause by any member of the board.

Before any certificate of registration is restricted, revoked or temporarily suspended, the board shall hold a hearing and give the holder of such certificate a fair and reasonable opportunity to present reasons and evidence against the restrictions, suspensions or revocation.

Any person whose certificate of registration is restricted, suspended or revoked shall be notified of such action by registered mail and shall have appeal rights in accordance with the provisions of Section 110 of this code.

104.9. Annual utilities permit.

104.9.1. Scope. For the purposes of this code, an annual utilities permit allows a serving electrical utility company to install dusk to dawn lighting on public or private property without obtaining separate electrical permits provided:

1. The installation is for dusk to dawn lighting only.

2. The installation and maintenance of the lighting is under the exclusive control of the supplying utility company.

3. The light fixtures shall be approved by the planning division and comply with the Zoning and Development Code.

4. The electrical installation complies with a lighting installation standard pre-approved by the building official.

5. The installing utility company has a current annual utilities permit.

This permit shall not be construed to waive any requirement of this chapter and the technical codes, and all applicable requirements shall be complied with.

104.9.2. Work report. A report listing of all dusk to dawn lighting installations under an annual utilities permit shall be submitted by the utility company to the building official on a monthly basis.

104.9.3. Permit fee and renewal. Every applicant shall submit a proposed dusk to dawn lighting standard installation plan for review and approval. An annual fee shall be paid at the time of application as prescribed in Table 2-A (see Appendix A). Said fee shall be refunded if the application is disapproved. The permit shall expire on December 31 of each year. The permit may be renewed each year by payment of the fee on or before December 31. Any work performed after permit expiration without obtaining separate permits and inspections required by this chapter shall be a violation of this code.

104.9.4. Revocation of permit. The building official may suspend or revoke a permit when an electrical utility company fails to comply with any of the permit responsibilities or for violation of any provision of this chapter and the technical codes.

104.9.5. Procedure. When the building official deems that the permit shall be suspended or revoked, the procedure shall be as follows:

1. The utility company shall be notified in writing by certified mail at least seven days prior to suspension or revocation.

2. Upon receipt of the notice, the utility company may request a hearing. Such request shall be in writing to the building official within seven days of receipt of notice.

3. If a hearing is requested by the utility company, the building official shall set a time, date and place and so notify the utility company.

4. When a hearing is conducted, the utility company and other interested parties may be in attendance. Upon completion of the hearing, the building official shall take all evidence submitted under advisement and shall notify the utility company of his findings in writing by certified mail.

5. If the decision rendered by the building official is adverse to the utility company, the utility company may appeal from such decision to the electrical code advisory board of appeals in the manner provided in Section 110 of this code.

104.10. Registered industrial plant.

104.10.1. Definition. For the purpose of this code, a Registered Industrial Plant is a person, firm, corporation, political entity, or public school engaged in manufacturing, processing, education or similar service which requires specialized buildings, utilities and equipment to the extent that the plant maintains full-time personnel for the operation and maintenance of such buildings, utilities and equipment and when such plant has complied with all the provisions of this section.

104.10.2. Qualifications. In addition to meeting the general definitions above, a registered industrial plant shall have a full-time or contract employee who is an architect or engineer registered in the State of Arizona who shall be responsible for complying with the substantive provisions of this chapter and the technical codes.

104.10.3. Scope. Registered Industrial Plants are exempt from the permitting requirements of Section 104.1 and 104.2, for work on existing buildings, structures and utilities accessory thereto that does not increase the floor area or height or cause the change of use or character of use for which a new certificate of occupancy would be required.

EXCEPTION: A Registered Industrial Plant is not exempt from permits and inspections for fire protection systems regulated by the Fire Code. Provided that public schools which are also registered industrial plants and which have fire systems permitted and inspected by the State of Arizona Fire Marshall's office, do not require permits for the minor alteration of existing fire protection systems..

This exemption is limited to buildings owned or leased by the Registered Industrial Plant and under the direct control of the holder of the registration. Said buildings or structures qualify for this exemption after the Certificate of Occupancy has been issued for the structure and all interior improvements covering the initial plant occupancy. This exemption shall not be construed to waive any requirement of this Chapter and the technical codes, and all applicable requirements shall be complied with. The Plant registration is non-transferable.

104.10.4. Application. To obtain registration, the applicant shall first file an application in writing on a form furnished by the building official for such purpose. Every such application shall:

1. Specify the name of the plant for which registration is requested.

2. Describe the property to be included under registration by address and other description that will readily identify and definitely locate the buildings and structures to be included under the registration.

3. The name of the individual who has the authority to act on behalf of the plant owner(s).

4. The name of the registered architect or engineer who will be responsible for the work done under the registration.

Appropriate action shall be taken by the building official on such application and the applicant shall be notified accordingly.

If the application is disapproved, the applicant may appeal from such decision to the building code advisory board of appeals in the manner provided in this chapter.

104.10.5. Registration and annual permit fee. Every applicant for registration shall pay a fee as prescribed in Table 2-A at the time of filing. Said fee shall be refunded if the application is disapproved. Registrations shall expire on December 31 of each year. Registration may be renewed each year by payment of the fee on or before December 31. Any work performed after expiration without obtaining additional separate permits and inspections required by this chapter shall be a violation of this code.

104.10.6. Validity of registration. Registration shall be valid only as long as the named architect or engineer remains in the employ or on contract with the Registered Industrial Plant in an active and full-time capacity.

If the registered architect or engineer should leave the employ of the registrant, registration is suspended until another registered architect or engineer is assigned the responsibility for work done under the registration. The Registered Industrial Plant shall notify the building official immediately and shall call for inspection of any work in progress in accordance with Section 106.5.

Before any new work commences while registration is invalid or suspended, permits and inspections shall be obtained pursuant to this chapter.

104.10.7. Revocation of registration. The building official may suspend or revoke a registration when the Registered Industrial Plant fails to comply with any of the registration responsibilities or for violation of any provision of this Chapter and the technical codes.

104.10.8. Procedure. When the building official deems that the registration shall be suspended or revoked, the procedure shall be as follows:

1. The registered industrial plant shall be notified in writing by certified mail at least seven days prior to suspension or revocation.

2. Upon receipt of the notice, the registered industrial plant may request a hearing. Such request shall be in writing to the building official within seven days of receipt of notice.

3. If a hearing is requested by the registered industrial plant, the building official shall set a time, date and place and so notify the registrant.

4. When a hearing is conducted, the registered industrial plant and other interested parties may be in attendance. Upon completion of the hearing, the building official shall take all evidence submitted under advisement and shall notify the registered industrial plant of his findings in writing by certified mail.

5. If the decision rendered by the building official is adverse to the registered industrial plant, the registered industrial plant may appeal from such decision to the building code advisory board of appeals in the manner provided in Section 110 of this code.

104.10.9. Work report and inspections. A report of all work done under the plant registration shall be prepared by the registered architect or engineer and submitted monthly to the building official together with any plans or working drawings for alterations to buildings or utilities covered by the code.

Plans submitted pursuant to this section may be reviewed and inspection of the work conducted by the building official or authorized representatives as set forth in this code, provided, however, that work may proceed without inspection pursuant to this section.

The Registered Industrial Plant may request a plan review or inspection of any work performed under this section without payment of additional fees.

EXCEPTIONS: Plans, working drawings and work reports need not be submitted for:

1. Installation of machines, equipment and processes related to production or testing;

2. Additions, alteration and repair of electrical, plumbing or mechanical systems;

3. Partitions, rails, counters and similar space dividers not exceeding five feet, nine inches in height above the floor.

104.11. Temporary structures and uses. The building official is authorized to issue a permit for temporary structures and temporary uses. Such permits shall be limited as to time of service, but shall not be permitted for more than 180 days. The building official is authorized to grant extensions for demonstrated cause. Temporary structures and uses shall conform to the structural strength, fire safety, means of egress, accessibility, light, ventilation and sanitary requirements of this Chapter and the technical codes as determined by the building official to ensure the public health, safety and general welfare. The building official is authorized to terminate such permit and to order the temporary structure or use to be discontinued.

104.12. Application for permit. To obtain a permit, an applicant shall first file an application in writing on a form furnished by the Community Development Department. Such application, as a minimum, shall contain the following:

a. Identify and describe the work to be covered by the permit.

b. Description of the land where the proposed work is to be done by legal description, street address or similar description that will readily identify and definitely locate the proposed building or work.

c. Indicate the use and occupancy of the proposed work.

d. Construction documents and other information as required in this section.

e. The valuation of the proposed work.

f. Signature of the applicant or the applicant's authorized agent.

g. Other data and information as required by the building official.

104.13. Action on application. The building official shall examine or cause to be examined applications for permits and related documents within a reasonable time after filing. If the application or the construction documents do not conform to the requirements of pertinent laws, the building official shall reject such application in writing, identifying the reasons for rejection.

If the building official is satisfied that the proposed work conforms to the requirements of this chapter, the technical codes and applicable laws and ordinances thereto, the building official shall issue a permit as soon as practicable, subject only to the payment of appropriate fees.

104.14. Time limitation of permit application. An application for a permit for any proposed work shall be valid for a period of one year from the date of filing. The building official is not authorized to grant any extension of time.

EXCEPTIONS:

1. Prior to the date of expiration of any application for which plans have not been approved, the applicant may submit a written request for a one time extension of 180 days. The request must explain the justifiable cause for the delay and include a proposed plan submittal schedule for the completion of the plan review process. If the request for extension is approved, the applicant must submit a new project submittal application along with a renewal fee equal to 25 percent of the original calculated plan review fee. The renewal fee must be paid no later than 30 calendar days after the original expiration date or the original application shall expire. Additional plan review fees may apply as prescribed in Table 1-A Building Permit Fees; Other Fees; Item 4. Additionally, all permits must be issued and permit fees paid prior to the end of the 180 day extension date.

2. Prior to the date of expiration of any application that has been approved for the issuance of permits, but for which a permit has not been issued, the applicant may request a one time extension of 180 days. The request must explain the justifiable cause for the delay. If the request for extension is approved, the applicant must submit a new project submittal application along with a renewal fee equal to 10 percent of the original calculated plan review fee. The renewal fee must be paid no later than 30 calendar days after the original expiration date or the original application shall expire. Additionally, the permits must be issued and permit fees paid prior to the end of the 180 day extension date.

Exceptions 1 and 2 above may not be combined.

104.15. Validity of permit. The issuance or granting of a permit shall not be construed to be a permit for, or an approval of, any violation of any of the provisions of this chapter, the technical codes or of any other ordinance of the jurisdiction. Permits presuming to give authority to violate or cancel the provisions of this chapter, the technical codes or other ordinances of the jurisdiction shall not be valid.

The issuance of a permit based on construction documents and other data shall not prevent the building official from requiring the correction of errors in the construction documents or in the construction.

The building official is also authorized to prevent occupancy or use of a structure where in violation of this chapter, the technical codes or of any other ordinances of this jurisdiction. Work shall be installed in accordance with the approved construction documents, and any changes made during construction that are not in compliance with the approved construction documents shall be resubmitted for approval as an amended set of construction documents.

104.16. Expiration of permit. Every permit issued shall become invalid unless the work on the site authorized by such permit is commenced within one year after its issuance, or if the work authorized on the site by such permit is suspended or declared abandoned by the owner for a period of one year after the date the work is commenced, or if the building official declares the permit suspended or abandoned after the expiration of one year from the date of permit issuance.

104.16.1. Work not commenced. Every permit issued under the provision of this chapter and the technical code shall be valid for a period of one year from the date of issuance provided, however, that any permit shall expire if work authorized by such permit is not commenced and an approved inspection obtained within one year from the date of issuance. An approved inspection shall be an inspection that is requested and approved pursuant to Section 106.5. Before work can be commenced on a structure for which the permit has expired, a new permit shall be obtained and the fee therefore shall be based on the total valuation of the structure.

104.16.2. Work commenced. Every permit issued under the provisions of this code shall be valid for a period of one year from the date of issuance. An approved inspection shall be an inspection that is requested and approved pursuant to Section 106.5.

Before work can be continued or resumed on a structure for which the permit has expired, a new permit shall be obtained and the fee thereof shall be determined by the building official on the basis of the valuation of the uncompleted portion of the work from the last approved inspection.

104.17. Unfinished buildings or structures. Whenever work has commenced on a building or structure for which a permit has been issued, and said permit has expired pursuant to Section 104.17, the owner of the property upon which structure is located, or other person or agent in control of said property, upon receipt of notice in writing from the department, shall within 30 days from the date of such written notice, obtain a new permit to complete the work and diligently pursue the work to completion, or within said 30 days, obtain a demolition permit and shall remove or demolish the building or structure within 120 days from the date of written notice. Notwithstanding the provisions of Section 104.17 and this section, whenever work on any building, structure, addition, alteration, appendage or repair has commenced, the exterior walls and roof shall be completed in accordance with the approved plans including but not limited to roofing, fenestration and finish materials including paint, within two years of commencing construction. In the absence of evidence to the contrary, the date of the first inspection request shall establish the date that construction commenced.

The provisions of this section shall apply to all permits issued on and after the effective date of this ordinance and permits issued or reinstated pursuant to Section 104.17.

Such building, structure, addition, alteration, appendage or repair not in compliance with this section is subject to the enforcement and abatement procedures of Chapter 21, Tempe City Code as a public nuisance.

104.18. Suspension or revocation. The building official is authorized to suspend or revoke a permit issued under the provisions of this chapter wherever the permit is issued in error or on the basis of incorrect, inaccurate or incomplete information, or in violation of any ordinance, regulation or any of the provisions of this chapter, the technical codes or of other ordinances of this jurisdiction.

104.19. Placement of permit. The building permit or copy thereof shall be kept on the site of the work until the completion of the project.
(Ord. No. 2011.33, 9-22-11)

Sec. 8-105. Construction documents.

105.1. Submittal documents. Plans, specifications, engineering calculations, diagrams, soil investigation reports, special inspection and structural observation programs and other data, as required by the building official, shall be submitted with each application for a permit. The construction documents shall be prepared by a registered design professional as required by State law and Section 105.3. Where special conditions exist, the building official is authorized to require additional construction documents to be prepared by a registered design professional.

EXCEPTION: The building official is authorized to waive the submission of construction documents and other data not required to be prepared by a design professional if it is found that the nature of the work applied for is such that review of construction documents is not necessary to obtain compliance with this chapter, the technical codes and other ordinances of the city.

105.1.1. Information on construction documents. Construction documents shall be dimensioned and drawn upon suitable material. Electronic media documents are permitted to be submitted when approved by the building official. Construction documents shall be of sufficient clarity to indicate the location, nature and extent of the work proposed and show in detail that it will conform to the provisions of this chapter, the technical codes and relevant laws, ordinances as determined by the building official.

105.1.2. Screening. Submittal documents may be subject to screening by the building official for completeness and code compliance prior to being accepted for permit review. Incomplete submittals or submittals containing readily apparent code violations shall be returned to the applicant without being accepted unless otherwise directed by the building official.

105.1.3. Title sheet information. The construction documents shall contain a title sheet or title sheets indicating the name, address and phone numbers of design professionals. The title sheet shall also contain information regarding the code review as performed by the design professional, including the size of the building, type of construction, occupancy classification(s), area and height modifications (if any), fire sprinklers (if any), and any other information as directed by the building official. The building official is authorized to waive or modify the requirement for a title sheet when the application for permit is for alteration or repair or when otherwise warranted.

105.1.4. Site plan. The construction documents submitted with the application for permit shall be accompanied by a site plan showing to scale the size and location of new construction and existing structures on the site, distances from lot lines and it shall be drawn in accordance with an accurate boundary line survey. In the case of demolition, the site plan shall show construction to be demolished and the location and size of existing structures and construction that are to remain on the site or plot. The building official is authorized to waive or modify the requirement for a site plan when the application for permit is for alteration or repair or when otherwise warranted.

105.1.5. Means of egress. The construction documents shall show in sufficient detail the location, construction, size and character of all portions of the means of egress in compliance with the provisions of the technical codes. In other than Group R-3 occupancies as applicable in Section 101.4.2, the construction documents shall designate the number of occupants to be accommodated on every floor, and in all rooms and spaces. The building official is authorized to waive or modify the requirement for a means of egress plan when the application for permit is for alteration or repair or when otherwise warranted.

105.1.6. Exterior wall envelope. Construction documents for all buildings shall describe the exterior wall envelope in sufficient detail to determine compliance with the technical codes. The construction documents shall provide details of the exterior wall envelope as required, including flashing, intersections with dissimilar materials, corners, end details, control joints, intersections at roofs, eaves or parapets, means of drainage, water-resistive membrane and details around openings.

The construction documents shall include manufacturer's installation instructions that provide supporting documentation that the proposed penetration and opening details described in the construction documents maintain the weather resistance of the exterior wall envelope. The supporting documentation shall fully describe the exterior wall system which was tested, where applicable, as well as the test procedure used.

The building official is authorized to waive or modify the requirement for an exterior wall envelope plan when the application for permit is for alteration or repair or when otherwise warranted.

105.2. Examination of documents. The building official shall examine or cause to be examined the permit application and accompanying construction documents and shall ascertain by such examinations whether the construction indicated and described is in accordance with the requirements of this chapter, the technical codes and other pertinent laws or ordinances.

105.2.1. Approval of construction documents. When the building official issues a permit, the construction documents shall be approved, in writing or by stamp, as reviewed for code compliance. One set of construction documents so reviewed shall be retained by the building official as required by the approved building safety division retention schedule. The other set shall be returned to the applicant, shall be kept at the site of work and shall be open to inspection by the building official. When the submittal documents are produced electronically, the applicant shall provide an electronic copy of all drawings on compact disk or other media approved by the building official.

105.2.2. Previous approvals. This chapter and the technical codes shall not require changes in the construction documents, construction or designated occupancy of a structure for

which a lawful permit has been heretofore issued or otherwise lawfully authorized, and the construction of which has been pursued in good faith and has not been abandoned pursuant to Section 104.13.

105.2.3. Phased approval. The building official is authorized to issue a permit for the construction of foundations, or other parts of a building or structure before the construction documents for the whole building or structure have been submitted, provided adequate information and detailed statements have been filed complying with pertinent requirements of this chapter and the technical codes. The holder of such permit for the foundation or other parts of a building or structure shall proceed at the holder's own risk with the construction operation and without assurance that a permit for the entire structure will be granted.

EXCEPTION: Phased construction approvals are not applicable for Group R-3 and R-4 occupancies.

105.3. Design professional in responsible charge. When it is required that permit submittal documents be prepared by a registered design professional, the building official shall be authorized to require the owner to engage and designate on the building permit application a registered design professional who shall act as the registered design professional in responsible charge.

If the circumstances require, the owner shall designate a substitute registered design professional in responsible charge who shall perform the duties required of the original registered design professional in responsible charge. The building official shall be notified in writing by the owner if the registered design professional in responsible charge is changed or is unable to continue to perform the duties.

The registered design professional in responsible charge shall be responsible for reviewing and coordinating submittal documents prepared by others, including phased and deferred submittal items, for compatibility with the design of the building.

Where structural observation is required by Section 1704 of the building code, the inspection program shall name the individual or firms who are to perform structural observation and describe the stages of construction where the structural observation is to occur.

105.3.1. Deferred submittals. For the purposes of this section, deferred submittals are defined as those portions of the design not submitted at the time of the application but are to be submitted to the building official within a specified period.

Deferral of submittal items shall have the prior approval of the building official. The registered design professional in responsible charge shall list the deferred submittals on the title sheet of the construction documents for review by the building official. Deferred submittal items shown on the construction documents shall be clearly noted as For Reference Only. Deferred submittals do not constitute phased approval of the construction.

Documents for deferred submittal items shall be submitted to the registered design professional in responsible charge who shall review them and forward them to the building official with a notation indicating the deferred submittal documents have been reviewed and been found to be in general conformance to the design of the building. The deferred submittal

items shall not be installed until the design and submittal documents have been approved by the building official.

105.4. Amended construction documents (revisions). Work shall be installed in accordance with the approved construction documents, and any changes made during construction that are not in compliance with the approved construction documents shall be resubmitted for approval as an amended set of construction documents.

105.5. Responsibility. It shall be the duty of every person who performs work for the installation or repair of building, structure, electrical, gas, mechanical, plumbing, or fire-suppression systems, for which this chapter or the technical codes are applicable, to comply with this chapter and the technical codes.

105.6. Retention of construction documents. One set of approved construction documents shall be retained by the building official for a period of time as prescribed by state or local laws and one set of approved construction documents shall be returned to the applicant, and said set of shall be kept on the site of the building or work at all times during which the work authorized thereby is in progress.
(Ord. No. 2011.33, 9-22-11)

Sec. 8-106. Inspections.

106.1. General. Construction or work for which a permit is required shall be subject to inspection by the building official and such construction or work shall remain accessible and exposed for inspection purposes until approved. Approval as a result of an inspection shall not be construed to be an approval of a violation of the provisions of this chapter, the technical codes or of other ordinances of the jurisdiction. Inspections presuming to give authority to violate or cancel the provisions of this chapter or the technical codes or of other ordinances of the jurisdiction shall not be valid. It shall be the duty of the permit applicant to cause the work to remain accessible and exposed for inspection purposes. Neither the building official nor the jurisdiction shall be liable for expense entailed in the removal or replacement of any material required to allow inspection.

It shall be the duty of the permit holder to provide an approved property address, including number and street name, at all construction sites. Such temporary premises identification shall be clearly visible from the street or roadway fronting the property, shall be installed prior to the first inspection, and shall be maintained until the permanent premises identification is installed and approved.

106.2. Inspection record card. Work requiring a permit shall not commence until the permit holder or an agent of the permit holder has posted or otherwise made available the inspection record card to allow the building official or authorized agent to conveniently make the required entries thereon regarding inspections of the work. The card shall be maintained available by the permit holder until final approval, by the building official, has been granted.

106.3. Preliminary inspections. Before issuing a permit, the building official is authorized to examine or cause to be examined buildings, structures or sites for which an application has been filed.

106.4. Inspection and observation program. When special inspection is required by Section 1704 of the building code or as determined by the building official, the owner, an agent of the owner, or the engineer or registered design professional in responsible charge, but not the contractor or any other person responsible for the work, shall employ one or more special inspector(s) who shall provide inspections during construction on the type of work listed under Section 1704.1 or as determined by the building official.

When special inspections are required, the special inspections are to be performed in addition to, not in lieu of, the inspections conducted by the building official, and shall not be construed to relieve the owner or his authorized agent from requesting the periodic and called inspections required by this chapter and the technical codes.

106.4.1. Special inspector. In accordance with Sections 1704.1 and 106.4 special inspector(s) shall be provided by, or under the supervision of an engineer or registered design professional in responsible charge of the structural inspection for which special inspection is required, subject to the following conditions:

106.4.2. Notification. (Prior to issuing permit) The owner or his authorized agent shall notify the community development department, building safety division in writing on the form provided by this division, the name of the engineer or registered design professional in responsible charge who will carry out the required inspection. The responsible engineer or registered design professional of record shall notify the department of any changes of special inspection(s) prior to conducting the inspections.

106.4.3. Certificate of responsibility. The engineer or registered design professional in responsible charge of the special inspection(s) shall so certify to the division in writing on the city form provided prior to the issuance of the building permit, and shall notify the division immediately if terminated prior to completion of the work, for which special inspection(s) is required.

106.4.4. Qualification. No person(s) shall be assigned to carry out the duties of the special inspector(s) unless thoroughly qualified by knowledge and experience to render full, complete and competent inspection.

It shall be the responsibility of the engineer or registered design professional in responsible charge of the special inspection to satisfy the duties and responsibilities as stated in Section 1704.1 of the building code.

106.4.5. Inspection and reports. The engineer or registered design professional in responsible charge of the special inspection(s) or the designated special inspector(s) shall provide continuous, competent and complete inspection on the work for which special inspection(s) is required in accordance with Section 1704.1 and shall submit reports to the division's inspection section stating approval of the work as it progresses, but not less than every two weeks.

The special inspector(s) shall notify the division immediately upon detection of all discrepancies involved in the special inspections that have not been corrected in accordance with the approved plans and specifications prior to proceeding with the work.

106.5. Required inspections. The building official, upon notification, shall make the inspections set forth in this section.

106.5.1. Footing and foundation inspection. Footing and foundation inspections shall be made after excavations for footings are complete and any required reinforcing steel is in place. For concrete foundations, the required forms shall be in place prior to inspection. An inspection shall be made prior to the placement of concrete. Materials for the foundation shall be on the site, except where concrete is ready mixed in accordance with ASTM C 94, the concrete need not be on the site.

106.5.2. Underground building service equipment. Underground plumbing, gas, mechanical, or electrical systems shall be inspected for approved materials, proper burial depth and slope but prior to the backfilling of trenches. The piping shall be bedded-in for its entire length, and if applicable, the systems shall be under the prescribed tests required by the technical codes.

106.5.3. Concrete slab and under-floor inspection. Concrete slab and under-floor inspections shall be made after in-slab or under-floor reinforcing steel and if applicable, building service equipment, conduit, piping accessories and other ancillary equipment items are in place and approved, but before any concrete is placed or floor sheathing installed, including the sub-floor.

106.5.4. Sewer or water service (building or private). Sewer or water service lines, that provide service to a building or multiple buildings on one site and not installed in a public right-of-way or PUE, shall be inspected for approved materials and proper slope prior to backfilling of the trenches.

106.5.5. Concrete or masonry walls or columns inspection. Walls and columns shall be inspected after all reinforcing steel, and if applicable, conduits and other piping are in place but prior to the placement of concrete or grout. For concrete walls or columns, required forms shall be in place prior to inspection. Masonry walls or columns constructed in lifts shall require an inspection prior to the grouting of each lift.

106.5.6. Exterior strap and shear inspection. Exterior wall shall be inspected after the sheathing (used for bracing/shear), wall bracing, metal straps or anchoring devices are in place but prior to the installation of the weather-resistive barrier or wall covering.

106.5.7. Rough building service equipment. Rough plumbing, gas, mechanical, or electrical systems shall be inspected for approved materials or proper slope but prior to concealing by the building finish materials. When applicable, the systems shall be under the prescribed tests required by the technical codes. When applicable, these inspections can be completed in conjunction with a frame inspection.

106.5.8. Frame inspection. Framing inspections shall be made after the roof deck or sheathing, all framing, fireblocking, draftstopping and bracing are in place, pipes, chimneys and vents to be concealed are complete, the rough building service equipment has been approved, after the roof is loaded with roof covering material and the building has been dried-in.

106.5.9. Lath and gypsum board inspection. Lath and gypsum board inspections shall be made after lathing and gypsum board, interior and, if applicable, exterior, is in place, but before any plastering is applied or gypsum board joints and fasteners are taped and finished.

EXCEPTION: Gypsum board that is not part of a fire-resistance-rated assembly, sound-rated assembly, or a shear assembly.

106.5.10. Fire-resistant penetrations. Protection of joints and penetrations in fire-resistance-rated assemblies shall not be concealed from view until inspected and approved. When applicable, this inspection shall be done in conjunction with the gypsum board inspection prior to joints and fasteners being taped and finished.

106.5.11. Energy efficiency inspections. Inspections shall be made to determine compliance with IBC Chapter 13 or IRC Chapter 11 and shall include, but not be limited to, inspections for: envelope insulation R- and U- values, fenestration U- value and SHGC, duct system sealing and R -value, HVAC and water-heating equipment efficiency or other insulation and efficiency verification.

106.5.12. Other inspections. In addition to the inspections specified above, the building official is authorized to make or require other inspections of any construction work to ascertain compliance with the provisions of this Chapter or the technical codes and other laws enforced by the Building Safety Division.

106.5.13. Special inspections. Special inspections and structural observations shall be as required in Section 1704 of the Building Code in accordance with Section 106.4 of this Chapter. Special inspections are in addition to, not in lieu of, the inspections conducted by the building official.

106.5.14. Final inspection. The final inspection shall be made after all work shown on the construction documents or as required by the permit is completed. When applicable, the systems shall be under the prescribed tests required by the technical codes.
(Ord. No. 2011.33, 9-22-11)

Sec. 8-107. Certificate of occupancy and final approvals.

107.1. Use and occupancy. No building or structure shall be used or occupied, and no change in the existing occupancy classification of a building or structure or portion thereof shall be made until the building official has issued a Certificate of Occupancy therefore as provided herein. Issuance of a certificate of occupancy shall not be construed as an approval of a violation of the provisions of this Chapter, the technical codes or other ordinances of the jurisdiction.

107.2. Letter of compliance. The building official is authorized to issue a Letter of Compliance for a building or structure permitted as a basic or shell building which cannot be occupied. If after a final inspection of the building or structure, and any electrical, fire protection, plumbing, mechanical, gas or similar systems shown on the approved plans there are no violations to the provisions of this Chapter, the technical codes or other laws and ordinances that are enforced by the Building Safety Division, the permit holder may request such Letter of Compliance. The Letter of Compliance certifies that the work performed under the permit has been satisfactorily completed, but does not authorize the occupancy of a basic or shell building or structure.

The letter of compliance shall contain the following:

1. The building permit number.

2. The address of the structure.

3. A description of the building, construction type, proposed occupancy type and building area.

4. A statement that the permitted work has been inspected for compliance with the requirements of this chapter and the technical codes.

5. The name and signature of the building official or designee.

107.3. Certificate of occupancy. After the building official inspects the building or structure and finds no violations of the provisions of this chapter, the technical codes or other laws that are enforced by the building safety division, the building official is authorized to issue a certificate of occupancy that contains the following:

1. The building permit number.

2. The address of the building or structure.

3. The type of construction as defined in Section 602.1 of the building code.

4. The occupancy, in accordance with the provisions of Section 302.1 of the building code.

5. The area of each occupancy within the building for which the permit was issued.

6. The occupant load of each occupancy for which the permit was issued for.

7. Indicate whether an automatic sprinkler system is provided in the building or structure.

8. A statement that the described portion of the structure has been inspected for compliance with the requirements of this chapter and the technical codes for the occupancy and division of occupancy and the use for which the proposed occupancy is classified.

9. The name and signature of the building official or designee.

10. Any special stipulations and conditions of the building permit.

EXCEPTION: Group U and additions to Group R-3 Occupancies, unless specifically requested by the permit holder. For such occupancies, occupancy and use is authorized upon the satisfactory completion of the final building inspection.

107.4. Temporary certificate of occupancy. The building official is authorized to issue a temporary certificate of occupancy before the completion of the entire work covered by the permit, provided that such portion or portions shall be occupied safely. The building official shall set the conditions, if any, and the time period during which the temporary certificate of occupancy is valid.

107.5. Revocation. The building official is authorized to suspend or revoke, in writing, a certificate of occupancy, letter of compliance or temporary certificate of occupancy issued under the provisions of this chapter wherever such certificate is issued in error, or on the basis of incorrect information supplied, or where it is determined the building or structure or portion thereof is in violation of any ordinance or regulation or any of the provisions of this chapter or the technical codes.

107.6. Posting. The certificate of occupancy shall be posted in a conspicuous place within the premises.
(Ord. No. 2011.33, 9-22-11)

Sec. 8-108. Unsafe structures and equipment.

108.1. General. Structures or building service equipment that are or hereafter become structurally unsafe, insanitary or deficient because of inadequate means of egress facilities, inadequate light and ventilation, or that constitute a fire hazard, or are otherwise dangerous to human life or which in relation to existing use constitutes a hazard to safety or health, or public welfare, by reason of inadequate maintenance, dilapidation, obsolescence, fire hazard, or abandonment, as specified in this Chapter, technical codes or any other effective ordinance, are for the purpose of this section, unsafe buildings. A vacant structure that is not secured against entry shall be deemed an unsafe condition. Unsafe conditions and structures shall be taken down, removed or made safe, as the building official deems necessary and as provided in this Chapter. All such unsafe buildings are hereby declared to be public nuisances and shall be abated by repair, rehabilitation, demolition or removal in accordance with the procedure specified in Sections 108.2, 108.3, 108.4 and 108.5.

108.1.2. Unsafe buildings appendages. Parapet walls, cornices, spires, towers, tanks, statuary and other appendages or structural members which are supported by, attached to, or a part of a building and which are in a deteriorated condition or are otherwise unable to sustain the design loads which are specified in this code, are hereby designated as unsafe building appendages. All such unsafe building appendages are public nuisances and shall be abated in accordance with Section 108.1 of this Chapter.

108.2. Notice to owner. The building official shall examine or cause to be examined every building or structure or portion thereof reported as dangerous or damaged and, if such is found to be an unsafe building as defined in this section, the building official shall give to the owner of such building or structure written notice stating the defects thereof. This notice may require the owner or person in charge of the building premises, within 48 hours, to commence either the required repairs or improvements or demolition and removal of the building or structure or portions thereof, and all such work shall be completed within 90 days from the date of notice, unless otherwise stipulated by the building official. If necessary, such notice also shall require the building, structure or portion thereof to be vacated forthwith and not reoccupied until the required repairs and improvements are completed, inspected, and approved by the building official.

108.2.1. Proper service. Proper service of such notice shall be by one of the following methods; personal service upon the owner of record, if found within the city limits; if not found within the city limits, such service may be made upon said owner by first class mail, postage paid, addressed to the owner, occupant, agent, manager or responsible person at the last know address; delivered in any manner permitted by the Arizona Rules of Civil Procedure for service

of process or posted in a conspicuous place on or about the entrance of the structure affected by such notice. Service by mail is deemed complete upon deposit in the U.S. mail. Service of such notice in the foregoing manner upon the owner's agent or upon the person responsible for the structure shall constitute service of notice upon the owner. The designated period within which said owner or person in charge is required to comply with the order of the building official shall begin as of the date such notice was mailed, received or posted.

108.3. Posting of signs. The building official shall cause to be posted at each entrance to such building a notice to read: DO NOT ENTER UNSAFE TO OCCUPY by order of the community development department, City of Tempe. Such notice shall remain posted until the required repairs, demolition or removal are completed. Such notice shall not be removed without written permission of the building official and no person shall enter the building except for the purpose of making the required repairs or of demolishing the building.

108.4. Right to demolish. In case the owner shall fail, neglect or refuse to comply with the notice to repair, rehabilitate, or to demolish and remove said building or structure or portion thereof, the City Council may order the owner of the building prosecuted as a violator of the provisions of this code and may order the building official to proceed with the work specified in such notice.

108.5. Costs. Costs incurred under Section 108.4 shall be paid out of the city treasury and shall be charged to the owner and collected by the finance and technology director in the manner specified in Chapter 21, Tempe City Code.

108.6. Restoration. The structure or building service equipment determined to be unsafe shall be permitted to be restored to a safe condition. To the extent repairs, alterations or additions are made or a change of occupancy occurs during the restoration of the structure, such repairs, alterations, additions or change of occupancy shall comply with the requirements of this chapter and the technical codes.
(Ord. No. 2011.33, 9-22-11)

Sec. 8-109. Violations.

109.1. Unlawful acts. It shall be unlawful for any person, firm or corporation to erect, construct, alter, extend, repair, move, remove, demolish or occupy any building, structure or building service equipment regulated by this chapter and the technical codes, or cause same to be done, in conflict with or in violation of any of the provisions of this chapter and the technical codes.

109.2. Illegal building. Every building or portion thereof constructed without a building permit where required by this chapter, shall be made to conform to the provisions of this chapter and the technical codes or shall be demolished.

109.3. Notice of violation. The building official is authorized to serve a notice of violation or order on the building owner, the owner’s agent or person responsible for the erection, construction, alteration, extension, repair, moving, removal, demolition or occupancy of a building, structure or building service equipment in violation of the provisions of this chapter, the technical codes or in violation of a permit or certificate issued under the provisions of this chapter. Service of such notice shall be as described in Section 108.2.1 of this chapter. Such

order shall direct the discontinuance of the illegal action or condition and the abatement of the violation.

109.4. Prosecution of violation. If the notice of violation is not complied within the time frame specified in the notice, the city may institute the appropriate proceeding at law, or in equity to restrain, correct or abate such violation, or to require the removal or termination of the unlawful occupancy of the building or structure in violation of the provisions of this chapter or of the technical codes or of the order or direction made pursuant thereto.

109.5. Remedies not exclusive. Violations of this chapter or the technical codes are in addition to any other violation established by law, and this chapter and shall not be interpreted as limiting the penalties, actions, or abatement procedures that may be taken by the city or other persons under the laws, ordinances or rules.

109.6. Violation penalties. Any person, firm, or corporation who shall violate any of the provisions of this chapter and the technical codes may be subject to one or more of the penalties as prescribed in the Tempe City Code, Chapter 21.

Civil sanction: A fine of not less than $100 nor more than $1,000 but total fines shall not exceed $2,000 per day for each property.

Criminal misdemeanor: If found guilty of a class one misdemeanor and upon conviction shall be punished by a fine not to exceed $2,500 or by imprisonment in the city jail for a period not to exceed six months, or by both such fine and imprisonment.

Separate Offense: Each day any violation is continued or the failure to perform any act or duty required by this section shall constitute a separate violation or offense.
(Ord. No. 2011.33, 9-22-11)

Sec. 8-110. Board of appeals[2].

110.1. General. In order to hear and decide appeals of orders, decisions or determinations made by the building official relative to the application and interpretation of this chapter and the technical codes, there shall be and is hereby created a board of appeals.

110.2. Limitations on authority. An application for appeal shall be based on a claim that the true intent of the technical codes or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of the technical codes do not fully apply or an equal or better form of construction is proposed. The board of appeals shall have no authority to waive requirements of the technical codes.

110.3. Created, composition.

110.3.1. Technical code advisory board of appeals. There shall be and is hereby created a technical code advisory board of appeals, consisting of nine members who are qualified by

[2] **Editor's note**—Ord. No. 2014.22 consolidated the building code advisory board of appeals, the electrical code advisory board of appeals and the plumbing and mechanical code advisory board of appeals into the single technical code advisory board of appeals. See §§ 110.3 et seq.

experience and training to pass upon matters pertaining to the technical provisions of the technical codes. For purposes of this division, the technical provisions shall mean all provisions of the technical codes except the administrative provisions.

One member shall be an architect, registered in the state; one member shall be a structural engineer, registered in the state, an International Code Council (ICC) certified commercial building inspector, or an ICC certified building plans examiner; one member shall be a building contractor or home builder; one member shall be an electrical engineer, registered in the state, an ICC certified commercial electrical inspector, or an ICC certified electrical plans inspector; one member shall be an electrical contractor or an electrician; one member shall be a mechanical engineer, an ICC certified commercial mechanical inspector, an ICC certified mechanical plans examiner, an ICC certified commercial plumbing inspector, or an ICC certified plumbing plans examiner; one member shall be a plumber or plumbing contractor; one member shall be a mechanical contractor; and one member shall be a representative of the fire medical rescue department or a fire protection consultant. The community development director or a designated employee of the community development department shall be an ex officio and non-voting member and shall act as secretary to the board.

110.3.2. Repealed.

110.3.3. Repealed.

110.4. Appointment, terms and vacancies. Appointments and terms of members shall be in accordance with article VI of the charter. In the event of the unexcused absence of a member from three consecutive meetings, the position shall be deemed vacant. Vacancies shall be filled in accordance with article VI of the charter for the unexpired term of any member unable or ineligible to serve. A member whose term expires may serve until a successor has been appointed. The city council may remove any member for cause.

110.5. Officers. The board shall elect a chairman and vice-chairman from among its members, neither of whom shall be an ex officio member. The chairman and vice-chairman shall each serve for a one-year period or until their successors are elected.

110.6. Meetings. The board shall hold one regular meeting every three months when there is pending business. Special meetings may be called by the community development director or at the request of the chairman or any five members. The affirmative vote of five members shall be required for passage of any matter before the board.

110.7. Powers, duties, responsibilities.

1. The board, on request or on its own motion, may interpret the technical provisions of the technical codes in special cases when it appears that the provisions of the code are inadequate and do not cover the point in question, and may recommend to the city council such new legislation as is consistent therewith.

2. The board may grant a variance to the technical provisions of the technical codes when it can be established that a manifest injustice would be done. A variance shall not be granted by the board unless it is found that:

    a. Special circumstances or conditions apply to the request; and

b. Granting the variance is necessary for the preservation and enjoyment of substantial property rights; and

c. Granting the variance will not be materially detrimental to persons residing or working in the premises, to adjacent or surrounding property or to the public in general; and

d. Granting the variance will be in harmony with the purposes sought to be attained by the technical codes.

Each case shall be evaluated on its individual merits and shall not be construed to set a precedent for deviating from the requirements of the technical codes. The findings of the board shall be binding upon all parties except as provided under Section 110.9.

3. The board may approve the use of the alternate materials or methods of construction, provided the alternate materials or method is, for the purpose intended, at least the equivalent of that prescribed by the building code in suitability, strength, effectiveness, fire resistance, durability, safety and sanitation.

4. The board may adopt such rules and regulations necessary for the discharge of its duties, provided said rules are not in conflict with the charter or this code.

5. The board is empowered to call upon the city attorney's office for legal counsel and upon any other office or board to aid and assist the board in its deliberations.

110.8. Appeal from decision of the community development director.

1. Any person dissatisfied with a decision of the community development director applying to the technical provisions of the technical codes or to an alternate material or method of construction may request a hearing before the board by filing an appeal with the community development director on a form provided therefore. Such appeal shall be heard at the next regular meeting of the board unless such appeal is filed within 21 days preceding the next regular board meeting, in which case such appeal shall be heard at the next succeeding regular or special board meeting.

2. All hearings shall be open to the public and any person whose interest may be affected by the decision shall be given an opportunity to be heard.

3. The board shall render all its decisions on appeals in writing to the appellant with a copy to the community development director.

110.9. Appeal from decision of the board.

1. If the board's decision is not concurred with by the appellant or the community development director, the appellant or the community development director may then appeal the decision to the city council within 21 days after the board's submission of such decision to the appellant and community development director. The appeal shall be in writing and shall be filed with the city clerk.

2. The city council's decision on the matter shall be predicated on the same findings as set forth in Section 110.7 and shall be final.

110.10. Appeal filing, fees.

1. Appeals shall be filed in the office of the community development department on a form provided therefore. A fee shall be paid at the time of filing of an appeal, in accordance with the schedule established by city council (see Appendix A).

2. No part of the fees required herein shall be refundable after an application is filed and the fee paid.

(Ord. No. 2011.33, 9-22-11; Ord. No. O2014.14, 3-20-14; Ord. No. O2014.22, 6-12-14)

Sec. 8-111. Fees.

111.1. Payment of fees. A permit shall not be issued nor considered valid until the applicable fees established by the City of Tempe in Tables 1-A or 2-A (see Appendix A) have been paid, nor shall an amendment to a permit be released until the additional fee, if any, has been paid.

111.2. Schedule of permit fees. On buildings, structures, electrical, gas, mechanical, plumbing, and fire systems or alterations thereto requiring a permit, a fee for each permit shall be paid as required in accordance with the schedule as established by the City of Tempe.

111.3. Building permit valuation. The applicant for a permit shall provide an estimated construction valuation at the time of initial application. Construction valuations shall include total value of the proposed work, including materials and labor, for which the permit is being issued, such as finish work, painting, roofing, electrical, gas, mechanical, plumbing equipment, heating, air-conditioning, elevators, fire extinguishing systems, other permanent systems/equipment, grading, landscaping, and other site related improvements. The final building permit valuation shall be the greater of the applicant’s declared valuation or the valuation calculated by using the department’s building valuation data, except that the building official or designee may set the final building permit valuation when deemed necessary.

Building permits issued for mechanical, electrical, and/or plumbing work are based on the greater of the applicant’s declared valuation or the department’s mechanical, electrical, and plumbing valuation data, except that the building official or designee may set the final building permit valuation when appropriate.

111.4. Plan review fees. When submittal documents are required by Section 105.1, a plan review fee shall be paid at the time of submitting the submittal documents for plan review. Said plan review fee shall be 65 percent of the building permit fee as shown in Table 1-A (see Appendix A).

The plan review fees specified in this subsection are separate fees from the permit fees specified in Section 111.3 and are in addition to the permit fees.

When submittal documents are incomplete or changed so as to require additional plan review, an additional plan review fee shall be charged at the rate shown in Table 2-A (see Appendix A).

The plan review fees pay for the initial plan review and two subsequent re-submittals for the same project. If more than three plan reviews are required, or if the permit application shall expire by time limitation, additional fees may be assessed for each plan review status meeting and for subsequent plan reviews as determined appropriate by the building official in accordance with Tables 1-A and 2-A (see Appendix A). At the time of permit issuance, additional plan review fees for any increase in valuation shall be assessed in conjunction with, and as a condition of, permit issuance.

111.4.1. Expedited plan review. Expedited plan review fees shall be equal to the amount of the plan review fees required by this section. Expedited plan review fees are separate from the plan review and permit fees required by this section and are in addition to those fees.

111.4.2. Public school shade structures. Shade structures constructed on public school property are exempt from plan review fees.

111.5. Investigation fees. Any person who commences work on a building, structure, electrical, gas, mechanical or plumbing system before obtaining the necessary permits shall be subject to an investigation fee established by the building official. The investigation fee shall be equal to and in addition to the permit fees required by this Chapter. The payment of such investigation fee shall not exempt an applicant from compliance with all other provisions of this Chapter and the technical codes. An investigation fee shall be collected whether or not a permit is then or subsequently issued.

EXCEPTIONS:

1. The building official may waive the investigation fee when extenuating circumstances exist.

2. The investigation fees for homeowners who have performed construction work on their property without contractors is limited to 50 percent of the of the permit fees required by this Chapter. This fee can be further reduced to 25 percent if the homeowner submits an application for permit, along with plans, and plan review fee, within 30 days of the Notice to Comply or other notice being issued.

111.6. Fee refunds. The building official may authorize the refunding of any fee paid hereunder which was erroneously paid or collected.

The building official may authorize the refunding of that portion of the permit fee in excess of a minimum valuation permit fee when no inspection has been done for which a permit has been issued in accordance with this code.

The building official may authorize the refunding of that portion of the plan review fee in excess of a minimum valuation permit fee when the application for a permit for which a plan review fee has been paid is withdrawn or canceled before any plan reviewing is done.

The building official shall not authorize the refunding of any fee paid except upon written request filed by the original applicant not later than 180 days after the date of fee payment.

111.7. Residential fee rebates. Building permit and plan review fees for improvements to single family residences may be rebated to the applicant upon successful completion of the project. This includes, but is not limited to, all additions, alterations, and improvements for such items as swimming pools, patio covers, building additions, landscaping, plumbing, mechanical, and electrical improvements. To qualify for the rebate, projects must be permitted after June 30, 2007 and must be completed and obtain their final inspection approval within one year of permit issuance.
(Ord. No. 2011.33, 9-22-11)

Sec. 8-112. Suite/unit number assignment.

112.1. Scope. The provisions of this section shall serve as the regulations for the assignment of suite and unit numbers on all multi-occupancy buildings within the City of Tempe.

112.2. Intent. The purpose of this section is to establish a consistent method for the assignment of suite and unit numbers. These requirements are intended to aid fire fighters and other emergency responders, provide for efficient access to property records and information, ensure conformance to the standards of the U.S. Postal Service, and our utility companies.

112.3. General address assignments. The engineering division of public works is responsible for the assignment of new street names, addresses, and building identification letters. New developments will be initially processed under the address assigned for each undeveloped parcel. The engineering division will subsequently assign the final address or addresses while the project plans are under review.

The building safety division is responsible for the assignment of the individual suite/unit numbers.

Once assigned, all building addresses and suite/unit numbers shall be forwarded by the engineering division to the community development department, U.S. Postal Service, Tempe police and fire medical rescue departments, and all utility companies.

The actual size, color, and field placement of addresses, suite, and unit numbers shall be as specified in the Zoning and Development Code.

112.4. Suite number assignments. All unit spaces within multi-occupant buildings will be assigned individual suite/unit numbers. Separate street addresses shall not be assigned to multiple tenants in a single building.

In order to initiate this process the project must submit a separate site plan including the building layouts to the community development department for suite/unit number assignment. This submittal shall consist of two copies of a properly scaled site plan at least 24 inches x 36 inches in size, depicting the site, building layouts, parking lots, building orientations, driveway locations, building exits, elevators, lobbies, and corridors. Proposed tenant layout plans may also be submitted with the required site plan to assist in the proper assignment of suite numbers.

All suite/unit numbers shall be assigned prior to permit issuance for any tenant improvements.

112.4.1. Tenant space layout. Retail and office buildings will be assigned a separate suite number for each 20 foot increment of space along the length of the building. Buildings that have tenant entrances on two or more sides will be assigned suite numbers on the entry sides of the building for each 20 foot increment of space. Reference lines will be drawn on the plan in to represent the 20 foot spacing. The reference lines shall determine the suite number a tenant improvement may use based on its proposed location within the building.

EXCEPTIONS:

1. Mixed use buildings such as office/warehouse and similar mixed uses may be divided into increments of up to 40 feet.

2. Apartments, condominiums, and hotels/motels will be assigned a unit number for each unit.

3. Townhouses without the availability of individual addresses will be assigned a unit number for each unit.

The suite numbers assigned to these spaces represent the possible number of spaces that the building may be divided into and are not meant to represent the actual tenant space layouts.

If a proposed tenant improvement encompasses multiple spaces, the tenant may choose any suite number within the range of suite numbers that the space will occupy.

112.4.2. Numbering. Suite/unit numbers are assigned as three digit numbers. The first digit in the suite number will represent the floor level of the suite/unit.

EXCEPTION: Four digit suite/unit numbers will be used for floors above the ninth floor, and for multifamily residential condominiums and apartments.

Duplicate unit numbers will not be used within multifamily projects, even if the project has more than one address or street entry. Projects containing multiple street addresses (areas) and containing a letter designation for each building, will have unit numbers assigned sequentially throughout the project. When numbering sequentially from one area to another, each new area will commence its numbering with the next 100 series left off from the previous area.

112.4.2.1. Exterior tenant entrances. For buildings with exterior tenant entrances, the suite numbering will commence from the left front of the building, as viewed from the street used in the building address, beginning with 101 and continuing clockwise sequentially to the right.

EXCEPTIONS:

1. Buildings with main entrances which do not face the address street will be assigned numbers from the left side of the building entrance clockwise sequentially to the right.

2. Building orientation on the lot may necessitate a front to back suite numbering.

112.4.2.2. Basements. Basement suite/unit numbers shall be preceded with the letter B.

112.4.3. Interior tenant entrances. For buildings with interior entrances only, from the street used in the building address, the suite/unit numbering starts with 101 on the left side after going through the main entrance to access the suite/unit spaces and continues clockwise around the corridor.

When buildings have multiple floors, the first suite shall start with ’01 numbers, such as 201 and 301, applicable to each floor level and shall start in the same general location as required for the first suite (101) on the ground floor then continue clockwise sequentially around the corridor.

EXCEPTION: Tenant spaces that occupy a complete floor level may be assigned the ’00 number, such as 200 and 300, applicable to that floor level, provided that at such time as the floor is occupied by two or more tenant spaces the numbers shall be reassigned to ’01 numbering.

For multiple floors, the suite numbering begins with the first suite on the left after exiting the elevator or main entry stairway for buildings with no elevator, and continuing clockwise around the corridor.

112.4.4. Atypical buildings and projects. Buildings and projects that cannot readily conform to these standards shall be reviewed on a case by case basis by a multi-disciplinary team made up an authorized member of the police department, fire medical rescue department, engineering department, community development department, and the U.S. Postal Service. Decisions rendered by this team may only be altered by the approval of all of the team members.

112.4.5. Existing buildings. Buildings not in conformity with the current suiting policy may continue to utilize existing suite numbering until such time that the building is:

1. At or below a 50 percent vacancy rate; and

2. When a tenant improvement is proposed.

All suites with tenant improvements after the building is at or below 50 percent vacancy rate will use the new suite numbers. The existing occupied suites will have 12 months to conform to the newly assigned suite numbers. If a conflict in suite numbering exists as a result of re-suiting to the current policy, the building official or designee shall implement a suite numbering plan for the building which shall, as practicable, bring all suites into substantial compliance.
(Ord. No. 2011.33, 9-22-11; Ord. No. O2014.14, 3-20-14)

Secs. 8-113—8-199. Reserved.

ARTICLE II. INTERNATIONAL BUILDING CODE

Sec. 8-200. Adopted; where filed; amendments.

That certain document known as the "International Building Code, 2009 Edition," which has been published as a code in book form by the International Code Council, chapters two through thirty-five and appendix chapters C, I and J inclusive, three (3) copies with amendments of which are on file in the office of the City Clerk.
(Ord. No. 2011.33, 9-22-11)

Charter reference—Adoption by reference, § 2.14.
State law reference—Adoption by reference, A.R.S. § 9-801 et seq.

Sec. 306. Factory Group F.

Section 306.2 is hereby amended as follows:

Woodworking (cabinet) (establishments with more than 3 woodworking appliances.)
(Ord. No. 2011.33, 9-22-11)

Sec. 308. Institutional Group I.

Section 308.2 is hereby amended as follows:

Section 308.2 Group I-1. This occupancy shall include buildings, structures or parts thereof housing more than ten persons, on a 24 hour basis, who because of age, mental disability or other reasons, live in a residential environment that provides personal care and/or supervisory care services. The occupants are capable of responding to an emergency situation without physical assistance from staff. This group shall include, but not be limited to, the following:

Residential board and care facilities
Assisted living centers
Halfway houses
Group homes
Congregate care facilities
Social rehabilitation facilities
Alcohol and Drug abuse treatment centers
Convalescent facilities

A facility such as the above with five or fewer persons, excluding staff, shall be classified as Group R-3 and shall comply with the International Residential Code in accordance with Section 101.2. A facility such as the above housing at least six but not more than ten persons, excluding staff, shall be classified as a Group R-4 and shall comply with the International Residential Code in accordance with Tempe Building Safety Administrative Code, Section 101.2 and with Section 424 of this code.

Section 308.3 is hereby amended as follows:

Section 308.3 Group I-2. This occupancy shall include buildings and structures used for medical, surgical, psychiatric, nursing, custodial, personal, or directed care on a 24 hour basis of persons who are not capable of self-preservation by responding to an emergency situation without physical assistance from staff. This group shall include, but not be limited to, the following:

Hospitals
Nursing homes (both intermediate-care facilities and skilled nursing facilities)
Mental hospitals
Detoxification facilities
(Ord. No. 2011.33, 9-22-11)

Sec. 310. Residential Group R.

Section 310.1 is hereby amended as follows:

R-1 Residential occupancies where the occupants are primarily transient in nature, including:

Boarding houses
Hotels
Motels

R-2 Residential occupancies containing sleeping units or more than two dwelling units where the occupants are primarily permanent in nature, including:

Apartment houses
Convents
Dormitories
Fraternities and sororities
Live/work units
Monasteries
Vacation timeshare properties

Fraternity and sorority houses are any building used in whole or in part as a dwelling and occupied by and maintained exclusively or primarily for college, university or professional school students who are affiliated with a social, honorary or professional organization recognized currently or in the past by a college, university or professional school.

R-3 Residential occupancies where the occupants are primarily permanent in nature and not classified as R-1, R-2, R-4 or I and where:

1. Buildings do not contain more than two dwelling units as applicable in Tempe Building Safety Administrative Code, Section 101.4.2, or

2. Adult care and child care facilities that provide accommodation for five or fewer persons, excluding staff, of any age. Adult care and child care facilities that are within a single-

family home are permitted to comply with the *International Residential Code* in accordance with Tempe Building Safety Administrative Code, Section 101.4.2.

R-4 Residential occupancies shall include buildings arranged for occupancy as residential care/assisted living facilities including at least six but not more than ten occupants, excluding staff.

Group R-4 occupancies shall meet the requirements for construction as defined for Group R-3 except as otherwise provided for in this code or shall comply with the *International Residential Code* in accordance with Tempe Building Safety Administrative Code, Section 101.4.2 and with Section 424 of this code.

Section 310.2 *Definitions* is hereby amended as follows:

PERSONAL CARE SERVICE. The care of residents who do not require chronic or convalescent medical or nursing care. Personal care involves assistance with activities of daily living that can be performed by persons without professional skills or professional training and includes the coordination or provision of intermittent nursing services, the administration of medications and treatments, and responsibility for the safety of the residents while inside the building.

RESIDENTIAL CARE/ASSISTED LIVING FACILITY. A building or part thereof housing at least six (6) but not more than ten (10) persons, excluding staff, on a 24 hour basis, who because of age, mental disability or other reasons, live in a supervised residential environment which provides supervisory and/or personal care services. The occupants are capable of responding to an emergency situation without physical assistance from staff. This classification shall include, but not be limited to, the following: residential board and care facilities, assisted living homes, halfway houses, group homes, congregate care facilities, social rehabilitation facilities, alcohol and drug abuse treatment centers and convalescent facilities.

SUPERVISORY CARE SERVICE. General supervision, including daily awareness of resident functioning and continuing needs.
(Ord. No. 2011.33, 9-22-11)

Sec. 406. Motor-vehicle-related occupancies.

Section 406.1.6 is hereby added as follows:

Section 406.1.6. Parking lot carport canopies. A parking lot carport canopy is a non-combustible building comprised of a freestanding roof supported by columns and entirely open on all sides with no enclosures beneath the roof. Parking lot carport canopies shall be used exclusively for the solar protection of parked motor vehicles and shall not be used to shelter any other use.

Parking lot canopies which do not comply with all the provisions of this section shall be constructed in accordance with the other provisions of the code.

Section 406.1.6.1. Construction and height. Parking lot carport canopies shall be constructed entirely of non-combustible materials, except that the roof covering may have a flame-spread rating of not more than 50. Parking lot carport canopies shall be designed in accordance with the requirements of Chapter 16.

Parking lot carport canopies shall have a clear height of not less than seven (7) feet (2134 mm). Where van accessible shaded parking is required by this Code the clear height shall meet Tempe's accessibility requirements.

Section 406.1.6.2. Location on property. No portion of parking lot carport canopies shall be located closer than five (5) feet (1524 mm) to any building or property line. A clear separation of not less than five (5) feet (1524 mm) shall be maintained between canopies on the same property. Parking lot carport canopies that cannot maintain the required separation between other canopies on the same property may be considered as one canopy provided the combined canopies do not exceed the allowable length and/or width as provided in 406.1.6.3. No canopy shall cover or encroach into any required fire lane.

Parking lot carport canopies which meet all of the requirements of this section may be located in any required yard without affecting any of the general building limitations of this Code.

Section 406.1.6.3. Maximum dimensions. Parking lot carport canopies shall not exceed 150 feet in length or 40 feet in width.

Section 406.1.6.4. Automatic sprinkler systems. Parking lot carport canopies constructed with a maximum area of 5,000 square feet of projected roof area, which meet all the requirements of this section, shall be permitted without automatic sprinkler system protection. (Ord. No. 2011.33, 9-22-11)

Sec. 410. Stages and platforms.

Section 410.3.1 is hereby amended as follows:

Section 410.3.1 Stage construction. Stages shall be constructed of materials as required for floors for the type of construction of the building in which such stages are located.

EXCEPTIONS:

1. Stages of Type IIB or IV construction with a nominal two (2) inch (51 mm) wood deck, provided that the stage is separated from the other areas in accordance with Section 410.3.4.

2. In buildings of Type IIA, IIIA and VA construction, a fire-resistive-rated floor is not required, provided the space below the stage is equipped with an automatic fire-extinguishing system in accordance with Section 903 or 904.

3. In all types of construction, the finished floor shall be constructed of wood or approved noncombustible materials. Openings through the floors shall be equipped with tight-fitting, solid wood trap doors with approved safety locks.

When the space beneath a stage is used only for electrical wiring or plumbing and it contains concealed spaces of combustible materials, the space shall be fireblocked in accordance with Section 717.2.7.

Section 410.4 is hereby amended as follows:

Section 410.4. Platform construction. Permanent platforms shall be constructed of materials as required for the type of construction of the building in which the permanent platform is located. Permanent platforms are permitted to be constructed of fire-retardant-treated wood for Type I, II and IV construction where the platforms are not more than 30 inches (762 mm) above the main floor and not more than one-third of the area of the room floor area and not more than 3,000 square feet (279 m^2) in area. Where the space beneath the permanent platform is used for storage or any other purpose other than electrical wiring or plumbing, the floor construction shall be not less than 1-hour fire-resistance-rated construction. Where the space beneath the permanent platform is used only for electrical wiring or plumbing, the underside of the permanent platform need not be protected. Such platforms containing concealed combustible spaces shall be fire blocked in accordance with Section 717.2.7.
(Ord. No. 2011.33, 9-22-11)

Sec. 419. Live/work units.

Section 419.3.2 is hereby amended as follows:

419.3.2. Sliding doors. In the residential portion of the unit, doors in a means of egress may be of the horizontal-sliding type. The force to slide the door to its fully open position shall be in accordance with Section 1008.1.3.

Section 419.3.4 is hereby amended as follows:

419.3.4. Locks. Egress doors, in the residential portion of the unit, shall be permitted to be locked in accordance with Exception 4 of Section 1008.1.9.3.

Section 419.5 is hereby amended as follows:

419.5. Fire protection. The live/work unit shall be provided with a monitored fire alarm system where required by Section 907.2.9 and an automatic sprinkler system in accordance with Section 903.2.1.
(Ord. No. 2011.33, 9-22-11)

Sec. 424. Residential care/assisted living facilities.

Section 424 is hereby added as follows:

Section 424.1. Applicability. The provisions of this section shall apply to a building or part thereof housing at least six (6) but not more than ten (10) persons, excluding staff, on a 24 hour basis, who because of age, mental disability or other reasons, live in a supervised residential

environment which provides licensed care services. Except as specifically required by this division, R-4 occupancies shall meet all applicable provisions of Group R-3.

Section 424.2. General. Buildings or portions of buildings classified as R-4 occupancies shall meet all the applicable provisions of Group R-3, may be constructed of any materials allowed by this code, shall not exceed two (2) stories in height nor be located above the second story in any building, and shall not exceed 2,000 square feet above the first story except as provided in Section 506.

Section 424.3. Special provisions. R-4 occupancies having more than 2,000 square feet of floor area above the first floor shall be of not less than one-hour fire-resistive construction throughout.

Section 424.3.1. Mixed Uses. R-4 occupancies shall be separated from other uses as provided in Table 508.4.

Section 424.3.2. Accessibility. R-4 occupancies shall be provided with at least one accessible route per Chapter 11 of this code. Sleeping rooms and associated toilets shall be accessible.

EXCEPTION: Existing buildings shall comply with Section 3411. Bathing and toilet facilities need not be made accessible, but shall be provided with grab bars in accordance with Chapter 11 of this code.

Section 424.3.3. Number of exits. Every story, basement, or portion thereof shall have not less than two exits.

EXCEPTION: Basements and stories above the first floor containing no sleeping rooms may have one means of egress as provided in Chapter 10.

Section 424.3.4. Distance to exits. Travel distance shall comply with Chapter 10, except that the maximum travel distance from the center point of any sleeping room to an exit shall not exceed 75 feet.

Section 424.3.5. Exit Signs/Illumination. Required exit doors shall be provided with illuminated exit signs in accordance with Section 1011 of this code.

Section 424.3.6. Emergency escape and rescue. R-4 occupancies shall comply with the egress requirements of Section 1029.

Section 424.3.7. Delayed egress locks. In R-4 occupancies, delayed egress locks shall be permitted in accordance with Sections 1008.1.9.7, items 1, 2, 4, 5 and 6.

Section 424.3.8. Smoke alarms and Carbon monoxide alarms. All habitable rooms and hallways in R-4 occupancies shall be provided with smoke alarms. The smoke and carbon monoxide alarms shall be installed in accordance with Section 907.2.11 and Section 1211.

Section 424.3.9. Sprinkler systems. R-4 occupancies shall be provided with a sprinkler system installed in accordance with Section 903.3.1.2. Sprinkler systems installed under this Section shall be installed throughout, including attached garages. Such systems may not contain unsupervised valves between the domestic water riser control valve and the sprinklers.
(Ord. No. 2011.33, 9-22-11)

Sec. 501. General.

Section 501.2 is hereby amended as follows:

Section 501.2. Premises identification. Approved numbers or addresses shall be provided for new or existing buildings in accordance with the Tempe Building Safety Administrative Code, Section 112.
(Ord. No. 2011.33, 9-22-11)

Sec. 507. Unlimited area buildings.

Section 507.3 is hereby amended as follows:

Section 507.3. Sprinklered, one-story. The area of a one-story, Group B, F, M or S building or a one-story Group A-4 building, of other than Type V construction, shall not be limited when the building is provided with an automatic sprinkler system throughout in accordance with Section 903.3.1.1, and is surrounded and adjoined by public ways or yards not less than 60 feet (18 288 mm) in width.

EXCEPTIONS:

1. Buildings and structures of Type I and II construction for rack storage facilities that do not have access by the public shall not be limited in height, provided that such buildings conform to the requirements of Sections 507.3 and 903.3.1.1 and Chapter 23 of the International Fire Code.

2. The automatic sprinkler system shall not be required in areas occupied for indoor participant sports, such as tennis, skating, swimming and equestrian activities in occupancies in Group A-4, provided that:

2.1 Exits doors directly to the outside are provided for occupants of the participant sports areas; and

2.2 The building is equipped with a fire alarm system with manual fire alarm boxes installed in accordance with Section 907.

Section 507.3.1. Mixed occupancy buildings with Groups A-1 and A-2. Group A-1 and A-2 occupancies of other than Type V construction shall be permitted within mixed occupancy buildings of unlimited area complying with Section 507.3, provided:

1. Group A-1 and A-2 occupancies are separated from other occupancies as required for separated occupancies in Section 508.4.4 with no reduction allowed in the fire-resistance rating of the separation based upon the installation of an automatic sprinkler system ;

2. Each area of the portions of the building used for Group A-1 or A-2 occupancies shall not exceed the maximum allowable area permitted for such occupancies in Section 503.1; and

3. All exit doors from Group A-1 and A-2 occupancies shall discharge directly to the exterior of the building.

Such buildings may contain other occupancies provided that such occupancies do not occupy more than 10 percent of the area of any floor of a building, nor more than the tabular values permitted in the occupancy by Table 503 for such occupancy. Such buildings having Group F and S occupancies may also have Group H-2, H-3 and H-4 fire areas within the building as provided by the limitations in Section 507.8.

Section 507.4 is hereby amended as follows:

Section 507.4. Two-story. The area of a two (2) story, Group B, F, M or S building shall not be limited when the building is provided with an automatic sprinkler system in accordance with Section 903.3.1.1 throughout, and is surrounded and adjoined by public ways or yards not less than 60 feet (18 288 mm) in width.

Such buildings may contain other occupancies provided that such occupancies do not occupy more than 10 percent of the area of any floor of a building, nor more than the tabular values permitted in the occupancy by Table 503 for such occupancy. Such buildings having Group F and S occupancies may also have Group H-2, H-3 and H-4 fire areas within the building as provided by the limitations in Section 507.8.
(Ord. No. 2011.33, 9-22-11)

Sec. 603. Combustible material in Type I and II construction.

Section 603.1.3 is hereby amended as follows:

Section 603.1.3 Electrical. The use of electrical wiring methods with combustible insulation, tubing, raceways and related components shall be permitted when installed in accordance with the limitations of the Tempe Electrical Code.
(Ord. No. 2011.33, 9-22-11)

Sec. 702. Definitions.

Section 702 is hereby amended as follows:

Environmental opening. An open space beneath and extending to grade plane under a floor/ceiling assembly or roof/ceiling assembly with structural supports other than exterior walls and not already defined or regulated elsewhere in this code. The space shall be open on at least three (3) sides. Each side shall be not less than 85 percent open starting a maximum of 12 inches (304.8 mm) below the floor/ceiling assembly or roof/ceiling assembly and extending down to the grade plane. The space below the assembly shall have no use or occupancy except as a vehicular or pedestrian passageway.
(Ord. No. 2011.33, 9-22-11)

Sec. 703. Fire-resistance ratings and fire tests.

Section 703.6 is hereby amended as follows:

Section 703.6. Marking and identification. Fire walls , fire barriers , fire partitions , smoke barriers and smoke partitions or any other wall required to have protected openings or penetrations shall be effectively and permanently identified with signs or stenciling. Such identification shall:

1. Be located on the wall surface in accessible concealed floor, floor-ceiling or attic spaces;

2. Be within ten (10) feet (3048 mm) of each side of an intersecting wall and repeated at intervals not exceeding thirty (30) feet (9144 mm) measured horizontally along the wall or partition; and

3. Include lettering not less than one-quarter (0.25) inch (6.35 mm) in width and two (2) inches (50.8 mm) in height, with the wording: "FIRE AND/OR SMOKE ASSEMBLY RATED XX HOUR-PROTECT ALL OPENINGS TO XX HOUR."

EXCEPTION: Walls in Group R-2 occupancies that do not have a removable decorative ceiling allowing access to the concealed space.

(Ord. No. 2011.33, 9-22-11)

Sec. 705. Exterior walls.

Section 705.8.7 is hereby amended as follows:

705.8.7. Environmental openings. Where an environmental opening occurs, the floor/ceiling assembly or roof/ceiling assembly and supporting construction of columns, beams, girders, joists, trusses or other load bearing members forming the opening shall have fire-resistance rated construction as required by Table 601 for the type of construction and Table 602 based on fire separation distance.

Where fire-resistance rated construction is only required by Table 602, the fire-resistance rated construction shall continue until reaching the distance where fire-resistance rated construction is no longer required.

EXCEPTION: Beams, girders, joists, trusses or other load bearing members which are perpendicular to the line used to determine the fire-separation distance shall be protected for their entire length including supporting construction at each end.

(Ord. No. 2011.33, 9-22-11)

Sec. 706. Fire walls.

Table 706.4 is hereby amended as follows:

TABLE 706.4
FIRE WALL FIRE-RESISTANCE RATINGS[c]

GROUP	FIRE-RESISTANCE RATING (hours)
A, B, E, H-4, I, R-1, R-2, U	3[a]
F-1, H-3[b], H-5, M, S-1	3
H-1, H-2	4[b]
F-2, S-2, R-3, R-4	2

a. Walls shall be not less than 2-hour fire-resistance rated where separating buildings of Type II or V construction.

b. For Group H-1, H-2 or H-3 buildings also see Sections 415.4 and 415.5.

c. For the purpose of this provision, occupancy changes between B, F-1, M or S-1 will not require a change to an existing fire (area separation) wall.

(Ord. No. 2011.33, 9-22-11)

Sec. 715. Opening protectives.

Section 715.5.2 is hereby amended as follows:

Section 715.5.2. Nonsymmetrical glazing systems. Nonsymmetrical fire-protection-rated glazing systems in fire partitions, fire barriers, or in exterior walls with a fire separation distance of less than or equal to ten (10) feet (3048 mm) pursuant to Section 705 shall be tested with both faces exposed to the furnace, and the assigned fire protection rating shall be the shortest duration obtained from the two tests conducted in compliance with NFPA 257 or UL 9.

(Ord. No. 2011.33, 9-22-11)

Sec. 721. Calculated fire resistance.

Section 721.2.1.4.3 is hereby amended as follows:

Section 721.2.1.4.3. Nonsymmetrical assemblies. For a wall having no finish on one side or different types or thicknesses of finish on each side, the calculation procedures of Sections 721.2.1.4.1 and 721.2.1.4.2 shall be performed twice, assuming either side of the wall to be the fire-exposed side. The fire-resistance rating of the wall shall not exceed the lower of the two values.

EXCEPTION: For an exterior wall with a fire separation distance greater than ten (10) feet (3048 mm) the fire shall be assumed to occur on the interior side only.

Section 721.3.2.3 is hereby amended as follows:

Section 721.3.2.3. Nonsymmetrical assemblies. For a wall having no finish on one side or having different types or thicknesses of finish on each side, the calculation procedures of this section shall be performed twice, assuming either side of the wall to be the fire-exposed side. The fire-resistance rating of the wall shall not exceed the lower of the two values calculated.

EXCEPTION**:** For exterior walls with a fire separation distance greater than ten (10) feet (3048 mm) the fire shall be assumed to occur on the interior side only.

Section 721.4.1.4 is hereby amended as follows:

Section 721.4.1.4. Nonsymmetrical assemblies. For a wall having no finish on one side or having different types or thicknesses of finish on each side, the calculation procedures of this section shall be performed twice, assuming either side to be the fire-exposed side of the wall. The fire resistance of the wall shall not exceed the lower of the two values determined.

EXCEPTION: For exterior walls with a fire separation distance greater than 10 feet (3048 mm) the fire shall be assumed to occur on the interior side only.

Section 721.6.2.3 is hereby amended as follows:

Section 721.6.2.3. Exterior walls. For an exterior wall with a fire separation distance greater than ten (10) feet (3048 mm), the wall is assigned a rating dependent on the interior membrane and the framing as described in Tables 721.6.2(1) and 721.6.2(2). The membrane on the outside of the nonfire-exposed side of exterior walls with a fire separation distance greater than ten (10) feet (3048 mm) may consist of sheathing, sheathing paper and siding as described in Table 721.6.2(3).
(Ord. No. 2011.33, 9-22-11)

Sec. 903. Automatic sprinkler systems.

Section 903 is hereby amended as follows:

Section 903.2. Where required. Approved automatic sprinkler systems shall be provided in the locations described in this section.

Section 903.2.1. New buildings or structures. All areas of new buildings or structures, and other locations required by this Chapter, shall be provided with an automatic fire sprinkler system complying with Section 903.3.1.1, 903.3.1.2 or 903.3.1.3 as applicable.

EXCEPTIONS: Unless the use of the facility otherwise requires automatic fire sprinkler protection, fire sprinkler systems shall not be required for the following:

1. R-3 occupancies of five thousand (5,000) square feet or less and other buildings or structures accessory to R-3 occupancies.

2. Detached non-combustible carports of five thousand (5,000) square feet or less in roof area.

3. In other than H occupancies, detached non-residential buildings of one thousand (1,000) square feet or less in floor area.

4. Detached non-combustible canopies less than five thousand (5,000) square feet in roof area used exclusively for vehicle fuel dispensing stations provided the fire separation distance required by Table 602 is maintained from property lines or other buildings.

5. Shade canopies less than five thousand (5,000) square feet; not closer than five (5) feet to any building, property line or other shade canopy; and shading one of the following: vehicles for sale at a dealership, vehicle-washing or drying facilities, playground equipment, or outdoor eating areas without cooking.

6. Shipping containers used for non-hazardous storage purposes and not closer than five (5) feet to any building, property line or other container.

7. Exterior roofs, overhangs or awnings of Type I, II or III construction with no combustible storage beneath.

8. Exterior covered/enclosed walkways of Type I, II or III construction with enclosing walls that are at least fifty percent (50%) open.

This section is not intended to indicate all instances or circumstances where fire sprinkler systems are required; refer to this Chapter and the Tempe Fire Code for other requirements.

Section 903.2.2. Group H-5 occupancies. An automatic sprinkler system shall be installed throughout buildings containing Group H-5 occupancies. The design of the sprinkler system shall not be less than that required by this code for the occupancy hazard classifications in accordance with Table 903.2.2. Where the design area of the sprinkler system consists of a corridor protected by one row of sprinklers, the maximum number of sprinklers required to be calculated is thirteen (13).

TABLE 903.2.2
GROUP H-5 SPRINKLER DESIGN CRITERIA

LOCATION	OCCUPANCY HAZARD CLASSIFICATION
Fabrication areas	Ordinary Hazard Group 2
Service corridors	Ordinary Hazard Group 2
Storage rooms without dispensing	Ordinary Hazard Group 2
Storage rooms with dispensing	Extra Hazard Group 2
Corridors	Ordinary Hazard Group 2

Section 903.2.3. Change of occupancy. An automatic sprinkler system complying with Section 903.3 shall be provided for an existing building or portion thereof undergoing a change of occupancy as follows, based upon the relative hazard levels indicated in Table 903.2.3:

1. When a change of occupancy is made to a higher level as shown in Table 903.2.3, the area or building shall be provided with an automatic fire sprinkler system.

2. When a change of occupancy is made within hazard level 1 as shown in Table 903.2.3, the area or building shall be provided with an automatic fire sprinkler system.

3. Any change of occupancy of a building or area of more than five thousand (5,000) square feet shall be retrofit with a fire sprinkler system.

TABLE 903.2.3
EXISTING BUILDING HAZARD LEVELS

HAZARD LEVEL	BUILDING OCCUPANCY TYPE
1 (highest)	H, I, R-1, R-2, R-4
2	A-2, A-5
3	A-1, A-3, A-4 , E
4	B, F-1, M, S-1
5 (lowest)	F-2, S-2, U, R-3

Notes: Occupancies are as defined in this Code.

When a change of occupancy of five thousand (5,000) square feet or less is made to a lower hazard level or within a hazard level (except hazard level 1), as shown in Table 903.2.3, the building is not required to be provided with an automatic fire sprinkler system.

This section is not intended to indicate all instances or circumstances where fire sprinkler systems are required; refer to this Chapter and the Tempe Fire Code for other requirements.

Section 903.2.4. Additions. All additions to existing buildings or structures and all buildings or structures that are expanded by an addition(s) shall be provided with an automatic fire protection system complying with Section 903.3 as applicable.

EXCEPTION: An existing non-sprinklered building or structure and additions to such existing building, provided the occupancy of the existing building is not changed, the addition is the same occupancy, and the total area of all such additions to the building do not exceed one thousand (1,000) square feet.

The above exception does not supersede other requirements of this Chapter or the Tempe Fire Code.

Section 903.2.5. Rubbish and linen chutes. An automatic sprinkler system shall be installed at the top of rubbish and linen chutes and in their terminal rooms. Chutes extending through three (3) or more floors shall have additional sprinkler heads installed within such chutes at alternate floors. Chute sprinklers shall be accessible for servicing.

Section 903.2.6. During construction. Automatic sprinkler systems required during construction, alteration and demolition operations shall be provided in accordance with the Tempe Fire Code.

Section 903.2.7. Ducts conveying hazardous exhausts. Where required by the Tempe Mechanical Code, automatic sprinklers shall be provided in ducts conveying hazardous exhaust, or flammable or combustible materials.

EXCEPTION: Ducts in which the largest cross-sectional diameter of the duct is less than ten (10) inches (254 mm).

Section 903.2.8. Commercial cooking operations. An automatic sprinkler system shall be installed in commercial kitchen exhaust hood and duct system where an automatic sprinkler system is used to comply with Section 904.

Section 903.2.9. Other required suppression systems. In addition to the requirements of Section 903.2, the provisions indicated in Table 903.2.11.6 also require the installation of a suppression system for certain buildings and areas

Section 903.3.1.2. NFPA 13R sprinkler systems. Where allowed in multi-family buildings, and Group R Division 4 occupancies, automatic sprinkler systems shall be installed throughout in accordance with NFPA 13R, provided there are no deletions of sprinklers in attics, bathrooms, closets (including those containing mechanical or electrical equipment), foyers, garages, carports, accessible areas under interior stairs and landings used for storage or living purposes.

Section 903.3.1.3. NFPA 13D sprinkler systems. Where allowed, automatic sprinkler systems in one- and two- family dwellings shall be installed throughout in accordance with NFPA 13D, provided there are no deletions of sprinklers in attics, bathrooms, closets (including those containing mechanical or electrical equipment), foyers, garages, carports, accessible areas under interior stairs and landings used for storage or living purposes.

Section 903.3.6. Hose threads. Fire hose threads used in connection with automatic sprinkler systems shall be approved and compatible with the Tempe fire medical rescue department hose threads.

Section 903.3.7. Fire department connections. The location of fire department connections shall be approved by the Tempe fire marshal's authorized representative.
(Ord. No. 2011.33, 9-22-11; Ord. No. 2014.14, 3-20-14)

Sec. 907. Fire alarm and detection systems.

Section 907.2.11.3 is hereby amended as follows:

Section 907.2.11.3. Interconnection. Where more than one smoke alarm is required to be installed within an individual dwelling unit or sleeping unit in Group R-1, R-2, R-3 or R-4, the smoke alarms shall be interconnected in such a manner that the activation of one alarm will activate all of the alarms in the individual unit. The alarm shall be clearly audible in all bedrooms over background noise levels with all intervening doors closed. In Group R-3, the interconnection of alarms may be accomplished with listed wireless smoke alarms.

Section 907.2.11.4 is hereby amended as follows:

Section 907.2.11.4. Power source. In new construction, required smoke alarms shall receive their primary power from the building wiring where such wiring is served from a commercial source and shall be equipped with a battery backup. Smoke alarms with integral strobes that are not equipped with battery backup shall be connected to an emergency electrical system. Smoke alarms shall emit a signal when the batteries are low. Wiring shall be permanent and without a disconnecting switch other than as required for overcurrent protection.

EXCEPTIONS:

1. Smoke alarms are not required to be equipped with battery backup where they are connected to an emergency electrical system.

2. Smoke alarms shall be permitted to be battery operated when installed in buildings without commercial power or where alterations or repairs do not result in the removal of interior wall or ceiling finishes exposing the structure.

3. Where alterations or repairs do not result in the removal of interior wall or ceiling finishes exposing the structure, hard-wiring of smoke alarms in existing areas shall not be required unless there is an attic, crawl space or basement available which could provide access for hard wiring without the removal of interior finishes.

Section 907.2.11.5 is hereby amended as follows:

Section 907.2.11.5. Alterations, repairs and additions. When alterations, repairs or additions requiring a permit occur, or when one or more sleeping rooms are added or created in existing dwellings, the individual dwelling unit shall be equipped with smoke alarms located as required for new dwellings.

EXCEPTIONS:

1. Work involving the exterior surfaces of dwellings, such as the replacement of roofing or siding, or the addition or replacement of windows or doors, or the addition of a porch or deck, are exempt from the requirements of this section.

2. Installation, alteration or repairs of plumbing or mechanical systems are exempt from the requirements of this section.

(Ord. No. 2011.33, 9-22-11)

Sec. 915. Emergency responder radio coverage.

Section 915.1 is hereby amended as follows:

Section 915.1. General. Emergency responder radio coverage shall be provided in all new buildings in accordance with Tempe City Code Chapter 9, Article II Section 9-21.

(Ord. No. 2011.33, 9-22-11)

Sec. 1008. Doors, gates and turnstiles.

Section 1008.1.2 is hereby amended as follows:

Section 1008.1.2. Door swing. Egress doors shall be of the pivoted or side-hinged swinging type.

EXCEPTIONS:

1. Private garages, office areas, factory and storage areas with an occupant load of 10 or less.

2. Group I-3 occupancies used as a place of detention.

3. Critical or intensive care patient rooms within suites of health care facilities.

4. Doors within or serving a single dwelling unit in Groups R-2 and R-3.

5. In other than Group H occupancies, revolving doors complying with Section 1008.1.4.1.

6. In other than Group H occupancies, horizontal sliding doors complying with Section 1008.1.4.3 are permitted in a means of egress.

7. Power-operated doors in accordance with Section 1008.1.4.2.

8. Doors serving a bathroom within an individual sleeping unit in Group R-1.

9. DELETED.

Doors shall swing in the direction of egress travel where serving an occupant load of 50 or more persons or a Group H occupancy.

Section 1008.1.4.4 is hereby amended as follows:

Section 1008.1.4.4. Access-controlled (Controlled egress) egress doors. The entrance doors in a means of egress in buildings with an occupancy in Group A, B, E, I-2, M, R-1 or R-2 and entrance doors to tenant spaces in occupancies in Groups A, B, E, I-2, M, R-1 and R-2 are permitted to be equipped with an approved entrance and egress access control system which shall be installed in accordance with all of the following criteria:

1. A sensor shall be provided on the egress side arranged to detect an occupant approaching the doors. The doors shall be arranged to unlock by a signal from or loss of power to the sensor.

2. Loss of power to that part of the access control system which locks the doors shall automatically unlock the doors.

3. The doors shall be arranged to unlock from a manual unlocking device located forty (40) inches to forty-eight (48) inches (1016 mm to 1219 mm) vertically above the floor and within five (5) feet (1524 mm) of the secured doors. Ready access shall be provided to the manual unlocking device and the device shall be clearly identified by a sign that reads "PUSH TO EXIT." When operated, the manual unlocking device shall result in direct interruption of power to the lock-independent of the access control system electronics-and the doors shall remain unlocked for a minimum of thirty (30) seconds.

4. Activation of the building fire alarm system, if provided, shall automatically unlock the doors, and the doors shall remain unlocked until the fire alarm system has been reset.

5. Activation of the building automatic sprinkler or fire detection system, if provided, shall automatically unlock the doors. The doors shall remain unlocked until the fire alarm system has been reset.

6. Entrance doors in buildings with an occupancy in Group A, B, E or M shall not be secured from the egress side during periods that the building is open to the general public.

7. A key (knox) box in accordance with the provisions of the Tempe Fire Code shall be provided for fire department access with a master key/access card in a location acceptable to the fire code official.

8. Entrance doors which are secured and restrict fire fighter access shall have a permanent symbol affixed to the exterior of the door or other location acceptable to the fire code official. The design and size of the symbol shall be acceptable to the fire code official and in accordance with the Tempe Fire Code Section 504.

Section 1008.1.4.4.1 is hereby amended as follows:

Section 1008.1.4.4.1. Access-controlled (Free egress) egress doors. The doors in a means of egress in buildings with an occupancy in Group A, B, E, F, I-1, I-2, I-4, M, R, S or U and doors to tenant spaces in occupancies in Groups A, B, E, F, I-1, I-2, I-4, M, R, S or U are permitted to be equipped with an approved access control system that allows free egress when installed in accordance with all of the following criteria:

1. Egress shall be accomplished with a handle, lever, panic or fire exit hardware that provides unobstructed egress without special knowledge, effort, key, tool or relies on any electronic method of operation.

2. Activation of the building fire alarm system, if provided, shall automatically unlock the doors, and the doors shall remain unlocked until the fire alarm system has been reset.

3. Activation of the building automatic sprinkler or fire detection system, if provided, shall automatically unlock the doors. The doors shall remain unlocked until the fire alarm system has been reset.

4. A key (knox) box in accordance with the provisions of the Tempe Fire Code shall be provided for fire department access with a master key/access card in a location acceptable to the fire code official.

5. Access controlled doors which are secured and restrict fire fighter access shall have a permanent symbol affixed to the exterior of the door or other location acceptable to the fire code official. The design and size of the symbol shall be acceptable to the fire code official and in accordance with the Tempe Fire Code Section 504.

Section 1008.1.5 is hereby amended as follows:

Section 1008.1.5. Floor elevation. There shall be a floor or landing on each side of a door. Such floor or landing shall be at the same elevation on each side of the door. Landings shall be level except for exterior landings, which are permitted to have a slope not to exceed 0.25 units vertical in twelve (12) units horizontal (2-percent slope).

EXCEPTIONS:

1. Doors serving individual dwelling units in Groups R-2 and R-3 where the following apply:

    1.1. A door is permitted to open at the top step of an interior flight of stairs, provided the door does not swing over the top step.

    1.2. Screen doors and storm doors are permitted to swing over stairs or landings.

2. Exterior doors as provided for in Section 1003.5, Exception 1, and Section 1020.2, which are not on an accessible route.

3. In Group R-3 occupancies not required to be Accessible units, Type A units or Type B units, the landing at an exterior doorway shall not be more than seven and three quarters (7.75) inches (197 mm) below the top of the threshold, provided the door, other than an exterior storm or screen door, does not swing over the landing.

4. Variations in elevation due to differences in finish materials, but not more than one-half (0.5) inch (12.7 mm).

5. Exterior decks, patios or balconies that are part of Type B dwelling units, have impervious surfaces and that are not more than four (4) inches (102 mm) below the finished floor level of the adjacent interior space of the dwelling unit, provided the door, other than an exterior storm or screen door, does not swing over the landing.

Section 1008.1.9.3 is hereby amended as follows:

Section 1008.1.9.3. Locks and latches. Locks and latches shall be permitted to prevent operation of doors where any of the following exists:

1. Places of detention or restraint.

2. In buildings in occupancy Group A having an occupant load of three hundred (300) or less, Groups B, F, M and S, and in places of religious worship, the main exterior door or doors are permitted to be equipped with key-operated locking devices from the egress side provided:

    2.1. The locking device is readily distinguishable as locked.

2.2. A readily visible durable sign is posted on the egress side on or adjacent to the door stating: THIS DOOR TO REMAIN UNLOCKED WHEN BUILDING IS OCCUPIED. The sign shall be in letters one inch (25 mm) high on a contrasting background.

2.3. The use of the key-operated locking device is revokable by the fire code official for due cause.

3. Where egress doors are used in pairs, approved automatic flush bolts shall be permitted to be used, provided that the door leaf having the automatic flush bolts has no doorknob or surface-mounted hardware.

4. Group R, Division 3 Occupancies and individual dwelling units within Group R, Division 2 Occupancies. Such occupancies may be provided with a night latch, dead bolt or security chain, provided such devices are openable from the inside without the use of a key or tool.

5. Fire doors after the minimum elevated temperature has disabled the unlatching mechanism in accordance with listed fire door test procedures.

Section 1008.1.9.4 is hereby amended as follows:

Section 1008.1.9.4. Bolt locks. Manually operated flush bolts or surface bolts are not permitted.

EXCEPTIONS:

1. On doors not required for egress in individual dwelling units or sleeping units.

2. Where a pair of doors serves a storage or equipment room, manually operated edge- or surface-mounted bolts are permitted on the inactive leaf.

3. Where a pair of doors serves an occupant load of less than fifty (50) persons in Group B, F or S occupancy, manually operated edge- or surface-mounted bolts are permitted on the inactive leaf. The inactive leaf shall contain no handles, bars, doorknobs, panic bars or similar operating hardware which provides the appearance that the inactive leaf may be used as part of the means of egress.

4. Where a pair of doors serves a Group B, F or S occupancy, manually operated edge- or surface-mounted bolts are permitted on the inactive leaf provided such inactive leaf is not needed to meet egress width requirements and the building is equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1. The inactive leaf shall contain no handles, bars, doorknobs, panic bars or similar operating hardware which provides the appearance that the inactive leaf may be used as part of the means of egress.

5. Where a pair of doors serves patient care rooms in Group I-2 occupancies, self-latching edge- or surface-mounted bolts are permitted on the inactive leaf provided that the inactive leaf is not needed to meet egress width requirements and the inactive leaf shall

contain no handles, bars, doorknobs, panic bars or similar operating hardware which provides the appearance that the inactive leaf may be used as part of the means of egress.

Section 1008.1.9.7 is hereby amended as follows:

Section 1008.1.9.7. Delayed egress locks. Approved, listed, delayed egress locks shall be permitted to be installed on doors serving any occupancy except Group A, E and H occupancies in buildings that are equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1 or an approved automatic smoke or heat detection system installed in accordance with Section 907, provided that the doors unlock in accordance with Items 1 through 6 below. A building occupant shall not be required to pass through more than one door equipped with a delayed egress lock before entering an exit.

1. The doors unlock upon actuation of the automatic sprinkler system or automatic fire detection system.

2. The doors unlock upon loss of power controlling the lock or lock mechanism.

3. The door locks shall have the capability of being unlocked by a signal from the fire command center.

4. The initiation of an irreversible process which will release the latch in not more than fifteen (15) seconds when a force of not more than fifteen (15) pounds (67 N) is applied for 1 second to the release device. Initiation of the irreversible process shall activate an audible signal in the vicinity of the door. Once the door lock has been released by the application of force to the releasing device, relocking shall be by manual means only.

   EXCEPTION: Where approved, a delay of not more than thirty (30) seconds is permitted.

5. A sign shall be provided on the door located above and within twelve (12) inches (305 mm) of the release device reading: PUSH UNTIL ALARM SOUNDS. DOOR CAN BE OPENED IN 15 [30] SECONDS.

6. Emergency lighting shall be provided at the door.

7. Delayed egress controlled doors which are secured and restrict fire fighter access shall have a permanent symbol affixed to the exterior of the door or other location acceptable to the fire code official. The design and size of the symbol shall be acceptable to the fire code official and in accordance with the Tempe Fire Code Section 504.

Section 1008.1.9.8 is hereby amended as follows:

Section 1008.1.9.8. Electromagnetically locked egress doors. Doors in the means of egress that are not otherwise required to have panic hardware in buildings with an occupancy in Group A, B, E, M, R-1 or R-2 and doors to tenant spaces in Group A, B, E, M, R-1 or R-2 shall

be permitted to be electromagnetically locked if equipped with listed hardware that incorporates a built-in switch and meet the requirements below:

1. The listed hardware that is affixed to the door leaf has an obvious method of operation that is readily operated under all lighting conditions.

2. The listed hardware is capable of being operated with one hand.

3. Operation of the listed hardware releases to the electromagnetic lock and unlocks the door immediately.

4. Loss of power to the listed hardware automatically unlocks the door.

5. Electromagnetically locked egress doors which are secured and restrict fire fighter access shall have a permanent symbol affixed to the exterior of the door or other location acceptable to the fire code official. The design and size of the symbol shall be acceptable to the fire code official and in accordance with the Tempe Fire Code Section 504.

(Ord. No. 2011.33, 9-22-11)

Sec. 1015. Exit and exit access doorways.

Section 1015.2.2 is hereby amended as follows:

Section 1015.2.2. Three or more exits or exit access doorways. Where access to three (3) or more exits is required, at least two (2) exit doors or exit access doorways shall be arranged in accordance with the provisions of Section 1015.2.1. Additional required exit doors or exit access doorways shall be spaced so a minimum distance of one-fourth (1/4) of the length of the maximum overall diagonal dimension of the area served is maintained between any other required exit door or exit access doorway.

(Ord. No. 2011.33, 9-22-11)

Sec. 1021. Number of exits and continuity.

Section 1021.2 is hereby amended as follows:

Section 1021.2. Buildings with one exit. Only one exit shall be required from Group R-3 occupancy buildings except those licensed as an assisted living facility or from stories of other buildings as indicated in Table 1021.2.

Occupancies shall be permitted to have a single exit in buildings otherwise required to have more than one exit if the areas served by the single exit do not exceed the limitations of Table 1021.2.

Mixed occupancies shall be permitted to be served by single exits provided each individual occupancy complies with the applicable requirements of Table 1021.2 for that occupancy.

Where applicable, cumulative occupant loads from adjacent occupancies shall be considered in accordance with the provisions of Section 1004.1.

Basements with a single exit shall not be located more than one story below grade plane.

Table 1021.2 is hereby amended as follows:

TABLE 1021.2
STORIES WITH ONE EXIT

STORY	OCCUPANCY	MAXIMUM OCCUPANTS (OR DWELLING UNITS) PER FLOOR AND TRAVEL DISTANCE
First story or basement	A, B[d], E[e], F[d], M, U, S[d]	49 occupants and 75 feet travel distance
	H-2, H-3	3 occupants and 25 feet travel distance
	H-4, H-5, I[f], R[f]	10 occupants and 75 feet travel distance
	S[a]	29 occupants and 100 feet travel distance
Second story	B[b], F, M, S[a]	29 occupants and 75 feet travel distance
	R-2	4 dwelling units and 50 feet travel distance
Third story	R-2[c]	4 dwelling units and 50 feet travel distance

For SI: 1 foot = 304.8 mm.

a. For the required number of exits for parking structures, see Section 1021.1.2.
b. For the required number of exits for air traffic control towers, see Section 412.3.
c. Buildings classified as Group R-2 equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1 or 903.3.1.2 and provided with emergency escape and rescue openings in accordance with Section 1029.
d. Group B, F and S occupancies in buildings equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1 shall have a maximum travel distance of one hundred (100) feet.
e. Day care occupancies shall have a maximum occupant load of ten (10).
f. R-4 and I-1 occupancies for Adult or Child Care facilities are not permitted to have only one exit.

(Ord. No. 2011.33, 9-22-11)

Sec. 1024. Luminous egress path markings.

Section 1024.1 is hereby amended as follows:

Section 1024.1. General. Approved luminous egress path markings delineating the exit path shall be provided in building having occupied floors located more than seventy-five (75) feet (22 860 mm) above the lowest level of fire department vehicle access in accordance with Sections 1024.1 through 1024.5.

EXCEPTIONS:

1. Luminous egress path markings shall not be required on the level of exit discharge in lobbies that serve as part of the exit path in accordance with Section 1027.1, Exception 1.

2. Luminous egress path markings shall not be required in areas of open parking garages that serve as part of the exit path in accordance with Section 1027.1, Exception 3.

(Ord. No. 2011.33, 9-22-11)

Sec. 1101. General.

Section 1101.2 is hereby amended as follows:

Section 1101.2. Design. Buildings and facilities shall be designed and constructed to be accessible in accordance with the this code, ICC A117.1, and Arizona Revised Statutes, Title 41, Chapter 9, Article 8, Public Accommodation and Services, The Arizonans with Disabilities Act, R 10-3-401 through R 10-3-404, which includes 28 CFR Part 35 and 28 CFR 36 and Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG). Where provisions may conflict between the different codes, the provision that provides the greatest degree of accessibility shall be used for any given building element.
(Ord. No. 2011.33, 9-22-11)

Sec. 1102. Definitions.

Section 1102.1 is hereby amended as follows:

DRESSING ROOM. A room in which changing clothes or dressing is an intended use, including but not limited to fitting rooms, locker rooms, and shower or bathing rooms where a separate room is not provided for dressing.
(Ord. No. 2011.33, 9-22-11)

Sec. 1211. Carbon monoxide alarms.

Section 1211 is hereby added as follows:

Section 1211.1. Carbon monoxide detection and notification. Carbon monoxide alarms shall be listed as complying with UL 2034 and shall be installed in accordance with this code and the manufacturer's installation instructions.

Section 1211.2. Carbon monoxide alarms. In new construction of R-2, R-3 and R-4 occupancies, an approved carbon monoxide alarm shall be installed outside of each separate sleeping area in the immediate vicinity of the bedrooms in dwelling units within which fuel-fired appliances are installed and in dwelling units that have attached garages.

Section 1211.3. Where required in existing dwellings. Where work requiring a permit occurs in existing dwellings that have attached garages or in existing dwellings units within which fuel-fired appliances exist, carbon monoxide alarms shall be provided in accordance with Section 1211.2.

Section 1211.4. Power source. Carbon monoxide alarms shall receive their primary power from the building wiring when such wiring is served from a commercial source, and when primary power is interrupted, shall receive power from a battery. Wiring shall be permanent and without a disconnecting switch other than those required for overcurrent protection. Carbon monoxide alarms shall be interconnected either by hard-wiring or with listed wireless alarms.

EXCEPTIONS:

1. Carbon monoxide alarms shall be permitted to be battery operated when installed in buildings without commercial power or where the alterations or repairs do not result in the removal of interior wall or ceiling finishes exposing the structure.

2. Hard-wiring of carbon monoxide alarms in existing areas shall not be required where the alterations or repairs do not result in the removal of interior wall or ceiling finishes exposing the structure, unless there is an attic, crawl space or basement available which could provide access for hard wiring without the removal of interior finishes.

(Ord. No. 2011.33, 9-22-11)

Sec. 1503. Weather protection.

Section 1503.4.2 is hereby amended as follows:

1503.4.2. Scuppers. When scuppers are used for secondary (emergency overflow) roof drainage, the quantity, size, location and inlet elevation of the scuppers shall be sized to prevent the depth of ponding water from exceeding that for which the roof was designed as determined by Section 1503.4.1. Scuppers shall be sized in accordance with the Tempe Plumbing Code, Section 1106 and 1107. The flow through the primary system shall not be considered when locating and sizing scuppers.

(Ord. No. 2011.33, 9-22-11)

Sec. 1603. Construction documents.

Section 1603.1.10 is hereby added as follows:

Section 1603.1.10. Floor and roof design live loads posted. Where the live loads for which each floor or portion thereof of a commercial or industrial building is or has been designed to exceed fifty (50) psf (2.40 kN/m2), such design live loads shall be conspicuously posted by the owner in that part of each story in which they apply, using durable signs. It shall be unlawful to remove or deface such notices.

Section 1603.1.11 is hereby added as follows:

Section 1603.1.11. Issuance of certificate of occupancy. A certificate of occupancy required by Section 107 shall not be issued until the floor load signs, required by Section 1603.1.10, have been installed.

Section 1603.1.12 is hereby added as follows:

Section 1603.1.12. Restrictions on loading. It shall be unlawful to place, or cause or permit to be placed, on any floor or roof of a building, structure or portion thereof, a load greater than is permitted by this code.
(Ord. No. 2011.33, 9-22-11)

Sec. 1607. Live loads.

Table 1607 is hereby amended as follows:

Table 1607.1
MINIMUM UNIFORMLY DISTRIBUTED LOADS AND MINIMUM CONCENTRATED LIVE LOADS

OCCUPANCY OR USE	UNIFORM (psf)	CONCENTRATED (lbs.)
27. Residential One- and two-family dwellings		---
Uninhabitable attics with limited storage[i, j, k]	40	
Habitable attics and sleeping areas	40	

Remainder of table is unchanged

Section 1607.7.1.2 is hereby amended as follows:

Section 1607.7.1.2. Components. Intermediate rails (all those except the handrail), balusters and panel fillers shall be designed to withstand a horizontally applied normal load of fifty (50) pounds (0.22 kN) on an area equal to one square foot ($0.093m^2$), including openings and space between rails. Reactions due to this loading are not required to be superimposed with those of Section 1607.7.1 or 1607.7.1.1.

Open guards shall be configured so that the balusters, panel fillers or ornamental patterns will not allow the passage of a sphere sized in accordance with Section 1013.3, through any opening when subjected to a horizontally applied normal load of 25 pounds (0.11 kN). Guards shall be maintained in conformance with this code.
(Ord. No. 2011.33, 9-22-11)

Sec. 1609. Wind loads.

Section 1609.1.1 is hereby amended as follows:

Section 1609.1.1. Determination of wind loads. Wind loads on every building or structure shall be determined in accordance with Chapter 6 of ASCE 7. The type of opening protection required, the basic wind speed and the exposure category for a site is permitted to be determined in accordance with Section 1609 or ASCE 7**,** but not less than ninety (90) mph three (3) second

gust, Exposure C. Wind shall be assumed to come from any horizontal direction and wind pressures shall be assumed to act normal to the surface considered.

EXCEPTIONS**:**

1. Subject to the limitations of Section 1609.1.1.1, the provisions of ICC-600 shall be permitted for applicable Group R-2 and R-3 buildings.

2. Subject to the limitations of Section 1609.1.1.1, residential structures using the provisions of the AF&PA WFCM.

3. Subject to the limitations of Section 1609.1.1.1, residential structures using the provisions of AISI S230.

4. Designs using NAAMM FP 1001.

5. Designs using TIA-222 for antenna-supporting structures and antennas.

6. Wind tunnel tests in accordance with Section 6.6 of ASCE 7, subject to the limitations in Section 1609.1.1.2.

7. Wind loads on solid freestanding walls may be calculated using the provisions of ASCE 7-02 or ASCE 7-05.

Section 1609.4.3 is hereby amended as follows:

Section 1609.4.3. Exposure C. Exposure C shall apply for all cases where Exposure B or D does not apply. To use Exposure B, the registered design professional shall provide evidence within the design calculations that Exposure B would apply to the project site.
(Ord. No. 2011.33, 9-22-11)

Sec. 2406. Safety glazing.

Section 2406.4 is hereby amended as follows:

Section 2406.4. Hazardous locations. The following shall be considered specific hazardous locations requiring safety glazing materials:

1. N/C

2. N/C

3. N/C

4. N/C

5. Glazing in doors and enclosures for or walls facing hot tubs, whirlpools, saunas, steam rooms, bathtubs and showers where the bottom exposed edge of the glazing is less than sixty (60) inches (1524 mm) measured vertically above any standing or walking surface. All

other interior or exterior glazing in bathrooms, shower rooms or other similar areas, where the bottom edge of which is less than 60 inches (1524 mm) above the standing or walking surface.

N/C for the remainder of this section
(Ord. No. 2011.33, 9-22-11)

Sec. 2902. Minimum plumbing facilities.

Section 2902.1 is hereby amended as follows:

Section 2902.1. Minimum number of fixtures. Plumbing fixtures shall be provided for the type of occupancy and in the minimum number shown in Table 2902.1. Types of occupancies not shown in Table 2902.1 shall be considered individually by the building official. The number of occupants shall be determined by this code. Occupancy classification shall be determined in accordance with Chapter 3.

EXCEPTION: Where approved by the building official or designee because of the use or character of the building or space or through statistical data, the occupant load used to determine the minimum number of fixtures may be less than that as calculated by Table 1004.1.1

Table 2902.1 is hereby amended as follows:

TABLE 2902.1
MINIMUM NUMBER OF REQUIRED PLUMBING FACILITIES [a]
(See Sections 2902.2 and 2902.3)

No.	CLASSIFICATION	USE GROUP	DESCRIPTION	WATER CLOSETS (SEE SECTION 419.2 OF THE INTERNATIONAL PLUMBING CODEFOR URINALS)		LAVATORIES		BATHTUBS OR SHOWERS	DRINKING FOUNTAINS [e, f, g, h] *(SEE SECTION 410.1 OF THE INTERNATIONAL PLUMBING CODE)*	OTHER
				MALE	FEMALE	MALE	FEMALE			
1	Assembly	A-2[d]	Nightclubs, bars, taverns, dance halls and buildings for similar purposes	1 per 40	1 per 40	1 per 75		—	1 per 500	—
			Restaurants, banquet halls and food courts	1 per 75	1 per 75	1 per 200		—	1 per 500	—
2	Business (see Sections 2902.2, 2902.4, 2902.4.1 and 2902.6)	B	Buildings for the transaction of business, professional services, other services involving merchandise, office buildings, banks, light industrial and similar uses	1 per 25 for the first 50 and 1 per 50 for the remainder exceeding 50		1 per 40 for the first 80 and 1 per 80 for the remainder exceeding 80		—	Where Separate Facilities are required by Section 2902.2 1 per 100	—
6	Mercantile (see Section 2902.2, 2902.5 and 2902.6)	M	Retail stores, service stations, shops, salesrooms, markets and shopping centers	1 per 500		1 per 750		—	Where Separate Facilities are required by Section 2902.2 1 per 1,000	—

(Ord. No. 2011.33, 9-22-11)

Remainder of table is unchanged.

a. N/C

b. N/C

c. N/C

d. N/C

e. N/C

f. In other than I-1 Residential care, I-3 Reformatories, detention centers and correctional centers, I-4 Adult day care and child care, R-2 Dormitories, fraternities,

sororities and boarding houses, R-3 Congregate living facilities with sixteen (16) or fewer persons, and R-4 Residential care/assisted living facilities, drinking fountains are not required for an occupant load of twenty-five (25) or fewer.

g. In individual tenant spaces provided with a break room sink(s) or water dispenser(s) of B, F-1, F-2, S-1 or S-2 occupancies, each break room sink or water dispenser may be used as a substitute for each required non-accessible drinking fountain.

h. Occupancies that provide food and/or beverage service to patrons do not need to provide drinking fountains.

Section 2902.1.1 is hereby amended as follows:

Section 2902.1.1. Fixture calculations. To determine the occupant load of each sex, the total occupant load shall be divided in half. To determine the required number of fixtures, the fixture ratio or ratios for each fixture type shall be applied to the occupant load of each sex in accordance with Table 2902.1. Fractional numbers resulting from applying the fixture ratios of Table 2902.1 shall be rounded up to the next whole number. For calculations involving multiple occupancies, such fractional numbers for each occupancy shall first be summed and then rounded up to the next whole number.

EXCEPTION:

1. Fractional numbers of one-half (.5) or less resulting from applying the fixture ratios of Table 2902.1 may be rounded down to the next whole number.

2. The total occupant load shall not be required to be divided in half where approved statistical data indicate a distribution of the sexes of other than fifty percent (50%) of each sex.

Section 2902.1.2 is hereby amended as follows:

Section 2902.1.2. Family or assisted use toilet and bath fixtures. Fixtures located within family or assisted use toilet and bathing rooms required by Section 1109.2.1 are permitted to be included in the number of required fixtures for either the male or female occupants in assembly and mercantile occupancies provided the required quantity of fixtures per sex is not reduced.
(Ord. No. 2011.33, 9-22-11)

Sec. 3102. Membrane structures.

Section 3102.2 is hereby amended as follows:

Section 3102.2. Definitions. The following words and terms shall, for the purposes of this section and as used elsewhere in this code, have the meanings shown herein.

MEMBRANE-COVERED FRAME STRUCTURE. A nonpressurized building wherein the structure is composed of a rigid framework which uses a single membrane material such as fabric, plastic or metal as the roof covering to provide shade or weather protection.

COMBUSTIBLE MEMBRANE STRUCTURE. A membrane structure in which the membrane is flame-resistant and may be of combustible or noncombustible material and all component parts of the structure are combustible.

Section 3102.3 is hereby amended as follows:

Section 3102.3. Type of construction. Noncombustible membrane structures shall be classified as Type IIB construction. Noncombustible frame or cable-supported structures covered by an approved membrane in accordance with Section 3102.3.1 shall be classified as Type IIB construction. Heavy timber frame-supported structures covered by an approved membrane in accordance with Section 3102.3.1 shall be classified as Type IV construction. Other membrane structures shall be classified as Type V construction. Membrane structures shall be provided with an automatic sprinkler system in accordance with Section 903.2.1 of this code.

EXCEPTION: Plastic less than 30 feet (9144 mm) above any floor used in greenhouses, where occupancy by the general public is not authorized, and for aquaculture pond covers is not required to meet the fire propagation performance criteria of NFPA 701.

Section 3102.6 is hereby amended as follows:

Section 3102.6. Mixed construction. Membrane structures shall be permitted to be utilized as specified in this section as a portion of buildings of other types of construction. Height and area limits shall be as specified for the type of construction and occupancy of the building.

EXCEPTION: A membrane structure attached or detached at the exterior of a building may be considered as a portion of buildings of other types of construction provided the construction type as classified in Section 3102.3 is equal to or greater than the type of construction of the building and the height and area limits shall be as specified for the type of construction and occupancy of the building.

(Ord. No. 2011.33, 9-22-11)

Sec. 3107. Signs.

Section 3107.1 is hereby amended as follows:

Section 3107.1. General. Signs shall be designed, constructed and maintained in accordance with the City of Tempe Zoning and Development Code.

(Ord. No. 2008.72, 12-11-08)

Sec. 3109. Swimming pool enclosure and safety devices.

Section 3109.2 is hereby amended as follows:

Section 3109.2. Definition. The following word and term shall, for the purpose of this section and as used elsewhere in this code, have the meaning shown herein.

SWIMMING POOL. Any structure intended for swimming or recreational bathing that contains water over eighteen (18) inches (430 mm) deep. This includes in-ground, aboveground, and on-ground swimming pools, hot tubs, and spas.

Section 3109.4.1 is hereby amended as follows:

Section 3109.4.1. Barrier height and clearances. The top of the barrier shall be at least five (5) feet (1525 mm) above grade measured on the side of the barrier that faces away from the swimming pool. The maximum vertical clearance between grade and the bottom of the barrier shall be two (2) inches (51 mm) measured on the side of the barrier that faces away from the swimming pool. Where the top of the pool structure is above grade, such as an aboveground pool, the barrier may be at ground level, such as the pool structure, or mounted on the top of the pool structure. Where the barrier is mounted on top of the pool structure, the maximum vertical clearance between the top of the pool structure and the bottom of the barrier shall be four (4) inches (102 mm).

Section 3109.4.4 is hereby added as follows:

Section 3109.4.4. Barrier exceptions.

1. Spas or hot tubs with a safety cover which complies with ASTM F 1346 shall be exempt from the barrier provisions of Section 3109.

2. Where the premises upon which a swimming pool, spa, or hot tub is located adjoins that body of water recorded as Tract S of The Lakes, an enclosure parallel to the bank is not required; provided, that an abutting enclosure, conforming to AG105, extends horizontally to the lakeside edge of the lake bank or beyond. For purposes of this exception, the word abutting shall mean terminating at the point of contact with the lakeside edge of the bank.

Section 3109.4.5 is hereby added as follows:

Section 3109.4.5. Unenclosed pools. It is hereby declared to be a public nuisance and dangerous to the public health, safety and welfare to maintain an outdoor swimming pool, spa or hot tub in the city unless enclosed in accordance with Section 3109, It shall be the responsibility of both the property owner and the occupant of the premises to install and maintain the fences, locks, latches, alarms, and gates in good condition and proper working order when water is in the pool, and either or both may be deemed in violation of this chapter for failure to do so.

Section 3109.4.6 is hereby added as follows:

Section 3109.4.6 Prerequisites to issuance of building permit. A building permit shall not be issued for any swimming pool, spa or hot tub unless the plans for such pool provide for an enclosure as required by this article.

Section 3109.4.7 is hereby added as follows:

Section 3109.4.7. Final inspection and approval. No swimming pool, spa or hot tub shall be filled in whole or in part with water unless the pool enclosure has been installed in accordance with this article and approved by the deputy community development director/building safety or authorized representative.
(Ord. No. 2011.33, 9-22-11)

Sec. 3401. General.

Section 3401.3 is hereby amended as follows:

Section 3401.3. Compliance with other codes. Alterations, repairs, additions and changes of occupancy to existing structures shall comply with the provisions for alterations, repairs, additions and changes of occupancy in the Tempe building codes.
(Ord. No. 2008.72, 12-11-08)

Sec. 3412. Compliance alternatives.

Section 3412.2 is hereby amended as follows:

Section 3412.2. Applicability. Buildings for which a certificate of occupancy has been issued and existing structures which have received a final inspection approval, in which there is work involving additions, alterations or changes of occupancy shall be made to conform to the requirements of this section or the provisions of Sections 3403 through 3409. The provisions in Sections 3412.2.1 through 3412.2.5 shall apply to existing occupancies that will continue to be, or are proposed to be, in Groups A, B, E, F, M, R, S and U. These provisions shall not apply to buildings with occupancies in Group H or I.
(Ord. No. 2011.33, 9-22-11)

Secs. 8-201-8-299. Reserved.

ARTICLE III. INTERNATIONAL RESIDENTIAL CODE

Sec. 8-300. Adopted; where filed; amendments.

(a) That certain document known as the "International Residential Code, 2009 Edition," which has been published as a code in book form by the International Code Council, chapters two through forty-four, and appendix chapters A, B, C, G, H, J, K, O, and P inclusive, three (3) copies with amendments of which are on file in the office of the City Clerk.
(Ord. No. 2011.33, 9-22-11)

Charter reference—Adoption by reference, § 2.14.
State law reference—Adoption by reference, A.R.S. § 9-801 et seq.

Sec. R201 GENERAL

Section R201.4 is hereby amended as follows:

Section R201.4. Terms not defined. Where terms are not defined through the methods authorized by this section, such terms shall have ordinarily accepted meanings such as the context implies. Webster's Third New International Dictionary of the English Language, Unabridged, shall be considered as providing ordinarily accepted meanings.
(Ord. No. 2011.33, 9-22-11)

Sec. R202 DEFINITIONS

Section R202 is hereby amended as follows:

EMERGENCY ESCAPE AND RESCUE OPENING. An operable window, door or similar device that provides for a means of escape that opens directly into a public street, public alley, yard or court and provides access for rescue in the event of an emergency.

EXTERIOR WALL. Any above-grade wall or element of a wall or any member or group of members, which has a slope of 60 degrees or greater with the horizontal plane that defines the exterior boundaries or courts of a building. This includes between-floor spandrels, peripheral edges of floors, roof and basement knee walls, dormer walls, gable end walls, walls enclosing a mansard roof and basement walls with an average below-grade wall area that is less than 50 percent of the total opaque and nonopaque area of that enclosing side.
(Ord. No. 2011.33, 9-22-11)

Sec. R301 DESIGN CRITERIA.

Section R301.1.1 is hereby amended as follows:

Section R301.1.1. Alternative provisions. As an alternative to the requirements in Section R301.1 with prior approval of the building official the following standards are permitted subject to the limitations of this code and the limitations therein. Where engineered design is used in conjunction with these standards the design shall comply with the *International Building Code.*

1. American Forest and Paper Association (AF&PA) *Wood Frame Construction Manual* (WFCM).
2. American Iron and Steel Institute (AISI), *Standard for Cold-Formed Steel Framing-Prescriptive Method for One- and Two-family Dwellings* (AISI S320).

3. ICC-400 *Standard on Design and Construction of Log Structures.*

Table R301.2 (1) is hereby amended as follows:

Table R301.2 (1)
CLIMATIC AND GEOGRAPHICAL DESIGN CRITERIA

GROUND SNOW LOAD	WIND DESIGN		SEISMIC DESIGN CATEGORY[g]	SUBJECT TO DAMAGE FROM				WINTER DESIGN TEMP[e]	ICE SHIELD UNDER-LAYMENT REQUIRED[h]	FLOOD HAZARDS[g]	AIR FREEZING INDEX[i]	MEAN ANNUAL TEMP.[j]
	Speed[d] (mph)	Exposure		Weathering[a]	Frost line depth[b]	Termite[c]						
0	90 3 sec	C	C	Negligible	12 inches	moderate to heavy		34 degrees	N/A	See Maricopa County	0	71.2°F

Table R301.5 is hereby amended as follows:

TABLE R301.5
MINIMUM UNIFORMLY DISTRIBUTED LIVE LOADS
(In pounds per square foot)

USE	LIVE LOAD
Attics without storage [b]	10
Attics with limited storage [b, g]	20
Habitable attics and attics served with fixed stairs	30
Balconies (exterior) and decks [e]	40
Fire escapes	40
Guardrails and handrails [d]	200[h]
Guardrails in–fill components [f]	50[h]
Passenger vehicle garages [a]	50[a]
Rooms other than sleeping rooms	40
Sleeping rooms	40
Stairs	40[c]

For SI: 1 pound per square foot = 0.0479 kPa, 1 square inch = 645 mm^2,
1 pound = 4.45 N.

a. Elevated garage floors shall be capable of supporting a 2,000-pound load applied over a 20-square-inch area.

b. Attics without storage are those where the maximum clear height between joist and rafter is less than 42 inches, or where there are not two or more adjacent trusses with the same web configuration capable of containing a rectangle 42 inches high by 2 feet wide, or greater, located within the plane of the truss. For attics without storage, this live load need not be assumed to act concurrently with any other live load requirements.

c. Individual stair treads shall be designed for the uniformly distributed live load or a 300-pound concentrated load acting over an area of 4 square inches, whichever produces the greater stresses.

d. A single concentrated load applied in any direction at any point along the top.

e. See Section R502.2.1 for decks attached to exterior walls.

f. Guard in-fill components (all those except the handrail), balusters and panel fillers shall be designed to withstand a horizontally applied normal load of 50 pounds on an area equal to 1 square foot. This load need not be assumed to act concurrently with any other live load requirement.

g. For attics with limited storage and constructed with trusses, this live load need be applied only to those portions of the bottom chord where there are two or more adjacent trusses with the same web configuration capable of containing a rectangle 42 inches high or greater by 2 feet wide or greater, located within the plane of the truss. The rectangle shall fit between the top of the bottom chord and the bottom of any other truss member, provided that each of the following criteria is met.

1. The attic area is accessible by a pull-down stairway or framed in accordance with Section R807.1.
2. The truss has a bottom chord pitch less than 2:12.
3. Required insulation depth is less than the bottom cord member depth.

The bottom chords of trusses meeting the above criteria for limited storage shall be designed for the greater of the actual imposed dead load or 10 psf, uniformly distributed over the entire span.

h. Glazing used in handrail assemblies and guards shall be designed with a safety factor of 4. The safety factor shall be applied to each of the concentrated loads applied to the top of the rail, and to the load on the in-fill components. These loads shall be determined independent of one another, and loads are assumed not to occur with any other live load.

(Ord. No. 2011.33, 9-22-11)

Sec. R302 FIRE-RESISTANT CONSTRUCTION

Section R302.2 is hereby amended as follows:

R302.2 Townhouses. Each townhouse shall be considered a separate building and shall be separated by fire-resistance-rated wall assemblies meeting the requirements of Section R302.1 for exterior walls.

Exception: A common 2-hour fire-resistance-rated wall assembly tested in accordance with ASTM E 119 or UL 263 is permitted for townhouses if such walls do not contain plumbing or mechanical equipment, ducts or vents in the cavity of the common wall. The wall shall have sufficient structural stability under fire conditions to allow collapse of construction on either side without collapse of the wall for the duration of time indicated by the required fire-resistance rating. The wall shall be rated for fire exposure from both sides and shall extend to and be tight against exterior walls and the underside of the roof sheathing. Electrical installations shall be installed in accordance with Chapters 34 through 43. Penetrations of electrical outlet boxes shall be in accordance with Section R302.4.

Section R302.2.4 is hereby amended as follows:

R302.2.4 Structural independence. Each individual townhouse shall be structurally independent.

Exceptions:

1. Foundations supporting exterior walls or common walls.
2. Structural roof and wall sheathing from each unit may fasten to the common wall framing.
3. Nonstructural wall and roof coverings.
4. Flashing at termination of roof covering over common wall.
5. Townhouses separated by a common 2-hour fire-resistance-rated wall as provided in Section R302.2.

Table R302.1 is hereby amended as follows:

TABLE R302.1
EXTERIOR WALLS

EXTERIOR WALL ELEMENT		MINIMUM FIRE-RESISTANCE RATING	MINIMUM FIRE SEPARATION DISTANCE
Walls	(Fire-resistance rated)	1 hour-tested in accordance with ASTM E 119 or UL 263 with exposure from both sides	< 5 feet[a]
	(Not fire-resistance rated)	0 hours	≥ 5 feet
Projections	(Fire-resistance rated)	1 hour on the underside	≥ 2 feet to 5 feet[b]
	(Not fire-resistance rated)	0 hours	5 feet
Openings in walls	Not allowed	N/A	< 3 feet
	25% maximum of wall area	0 hours	3 feet
	Unlimited	0 hours	5 feet
Penetrations	All	Comply with Section R317.3	< 5 feet
		None required	5 feet

For SI: 1 foot = 304.8 mm.
N/A = Not Applicable.

a. Existing dwellings or additions thereto which were legally constructed prior to the effective date of this provision with exterior wall(s) and/or column(s) existing at ≥ three (3') feet from lot line may continue or extend the use of the existing condition without complying with this provision provided:
   - Any new addition is on the same side of the dwelling where the existing exterior wall line is ≥ three (3') feet from lot line.
   - The new addition's exterior wall line and the existing dwelling/addition exterior wall line are on the same plane.
   - Projections < three (3') feet from property line are of one (1) hour fire-resistive construction on the underside.
   - Projections maintain a minimum fire separation distance of ≥ two (2') feet from property line.

b. Except where allowed as noted in footnote (a) above.

Section R302.5.1 is hereby amended as follows:

Section R302.5.1. Opening protection. Openings from a private garage directly into a room used for sleeping purposes shall not be permitted. Other openings between the garage and residence shall be equipped with solid wood doors not less than 1⅜ inch (35 mm) in thickness, solid or honeycomb core steel doors not less than 1⅜ inches (35 mm) thick, or 20-minute fire-rated doors. Doors providing opening protection shall be maintained self-closing and self-latching.
(Ord. No. 2011.33, 9-22-11)

Sec. R308 GLAZING

Section R308.4 is hereby amended as follows:

R308.4 Hazardous locations. The following shall be considered specific hazardous locations requiring safety glazing materials:

1. No Change
2. No Change
3. No Change
4. No Change
5. Glazing in doors and enclosures for or walls facing hot tubs, whirlpools, saunas, steam rooms, bathtubs and showers where the bottom exposed edge of the glazing is less than 60 inches (1524 mm) measured vertically above any standing surface or walking surface. All other interior or exterior glazing in bathrooms, shower rooms or other similar areas, the bottom edge of which is less than 60 inches (1524 mm) above the standing or walking surface.
6. No Change
7. No Change
8. No Change

(Ord. No. 2011.33, 9-22-11)

Sec. R311 MEANS OF EGRESS

Section R311.2 is hereby amended as follows:

Section R311.2. Egress door. At least one egress door shall be provided for each dwelling unit. The egress door shall be side-hinged, and shall provide a minimum clear width of 32 inches (813 mm) when measured between the face of the door and the stop, with the door open 90 degrees (1.57 rad). The minimum clear height of the door opening shall not be less than 78 inches (1981 mm) in height measured from the top of the threshold to the bottom of the stop. Other doors shall not be required to comply with these minimum dimensions. Egress doors shall be readily openable from inside the dwelling without the use of a key or special knowledge or effort.

Exception: One and two-family dwellings and individual dwelling units of townhomes not more than three stories above grade plane may be provided with a night latch, dead bolt or security chain, provided such devices are openable from the inside without the use of a key or special knowledge or effort.

(Ord. No. 2011.33, 9-22-11)

Sec. R313 AUTOMATIC FIRE SPRINKLERS.

Section R313 is hereby deleted.

(Ord. No. 2011.33, 9-22-11)

Sec. R314 SMOKE ALARMS

Section R314.4 is hereby amended as follows:

R314.4 Power source. Smoke alarms shall receive their primary power from the building wiring when such wiring is served from a commercial source, and when primary power is interrupted, shall receive power from a battery. Wiring shall be permanent and without a disconnecting switch other than those required for overcurrent protection. Smoke alarms shall be interconnected either by hard-wiring or with listed wireless alarms.

Exceptions:

1. Smoke alarms shall be permitted to be battery operated when installed in buildings without commercial power or where the alterations or repairs do not result in the removal of interior wall or ceiling finishes exposing the structure.

2. Hard-wiring of smoke alarms in existing areas shall not be required where the alterations or repairs do not result in the removal of interior wall or ceiling finishes exposing the structure, unless there is an attic, crawl space or basement available which could provide access for hard wiring without the removal of interior finishes.

(Ord. No. 2011.33, 9-22-11)

Sec. R315 CARBON MONOXIDE ALARMS

Section R315.4 is hereby added as follows:

R315.4 Power source. Carbon monoxide alarms shall receive their primary power from the building wiring when such wiring is served from a commercial source, and when primary power is interrupted, shall receive power from a battery. Wiring shall be permanent and without a disconnecting switch other than those required for overcurrent protection. Carbon monoxide alarms shall be interconnected either by hard-wiring or with listed wireless alarms.

Exceptions:

1. Carbon monoxide alarms shall be permitted to be battery operated when installed in buildings without commercial power or where the alterations or repairs do not result in the removal of interior wall or ceiling finishes exposing the structure.

2. Hard-wiring of carbon monoxide alarms in existing areas shall not be required where the alterations or repairs do not result in the removal of interior wall or ceiling finishes exposing the structure, unless there is an attic, crawl space or basement available which could provide access for hard wiring without the removal of interior finishes.

(Ord. No. 2011.33, 9-22-11)

Sec. R319 SITE ADDRESS

Section R319.1 is hereby amended as follows:

Section R319.1 Address numbers. Buildings shall have approved address numbers, building numbers or approved building identification placed in a position that is plainly legible and visible from

the street or road fronting the property. The actual size, color, and field placement of addresses numbers shall be as specified in the Tempe Zoning and Development Code.

Exceptions: Buildings constructed prior to January 20, 2005 may replace missing address numbers with numbers that are a minimum 4 inches (102mm) high with a minimum stroke width of ½ inch (12.7mm) that have a color contrast with the background color of at least fifty (50%) percent.

(Ord. No. 2011.33, 9-22-11)

Sec. R322 FLOOD-RESISTANT CONSTRUCTION

Section R322.1 is hereby amended as follows:

R322.1 General. Buildings and structures constructed in whole or in part in flood hazard areas (including A or V Zones) as established in Table R301.2(1) shall be designed and constructed in accordance with the Tempe City Code, Chapter 12 and applicable provisions contained in this section.
(Ord. No. 2011.33, 9-22-11)

Sec. R324 BUILDING SECURITY.

Section R324 is hereby added as follows:

Section R324.1. Scope. The provisions of this chapter shall apply to openings into dwelling units and to openings between attached garages and dwelling units. Door openings, including vehicular access doors in enclosed attached garages shall be in accordance with the provisions of this chapter.

Exceptions:

1. An opening in an exterior wall when all portions of such openings are more than 12 feet (3658 mm) vertically or 6 feet (1829 mm) horizontally from an accessible surface of any adjoining yard, court, passageway, public way, walk, breezeway, patio, planter, porch or similar area.

2. An opening in an exterior wall when all portions of such openings are more than 12 feet (3658 mm) vertically or 6 feet (1829 mm) horizontally from the surface of any adjoining roof, balcony, landing, stair tread, platform or similar structure or when any portion of such surface is itself more than 12 feet (3658 mm) above an accessible surface.

3. Any opening in a roof when all portions of such roof are more than 12 feet (3658 m) above an accessible surface.

4. Openings when the small dimension is 6 inches (152 mm) or less, provided that the closest edge of the opening is at least 36 inches (914 mm) from the locking device of the door or window assembly.

5. Openings protected by required fire door assemblies having a fire-endurance rating of not less than 45 minutes.

Section R324.2.1. General. Swinging doors shall be one of the following:

1. Wood flush-type door 1-3/4 inches thick minimum.

2. Wood panel-type door 1-3/4 inches thick minimum with all panels fabricated from material not less than 3/8 inch in thickness; provided all shaped portions of the panels are not less than 1/4 inch thick.

3. Ferrous metal doors of solid or hollow core construction with surfaces not less than 24 gauge in thickness.

4. Other metal doors with surfaces not less than the equivalent of 16 gauge sheet metal (0.06 inch) in thickness.

Section R324.2.2. Locking hardware. Single swinging doors and the active leaf of doors in pairs shall be equipped with an approved exterior key operating deadbolt or locking device as follows:

1. Strike deadbolts with a minimum throw of one inch and an embedment of not less than 5/8 inch into the holding device receiving the projected bolt.

2. Hook shape or expanding lug deadbolts with a minimum throw of 3/4 inch.

3. Deadbolts or locks which automatically activate two or more deadbolts with an embedment of not less than l/2 inch into the holding device receiving the projected bolts.

The inactive leaf of doors in pairs shall be equipped with manually or automatically operated hardened bolts at the top and bottom, with an embedment not less than 1/2 inch into the device receiving the projected bolt.

Cylinder guards shall be installed on all mortise or rim-type cylinder locks whenever the cylinder projects beyond the face of the door or is otherwise accessible to gripping tools.

Section R324.3 Windows. Window assemblies regulated by this chapter which are designed to be openable shall be constructed and installed so as to prohibit raising, sliding, or removal of the moving section while in the closed and locked position, unless such windows are protected by approved metal bars, screens or grilles. Louvered windows regulated by this chapter shall be protected by approved metal bars or grilles.

Section R324.4 Upward acting doors. Upward acting doors shall be secured with a cylinder lock, padlock with a hardened steel shackle and hardened steel hasp, metal slide bar, bolt or equivalent device, unless secured by electric power operation.

Cylinder guards shall be installed on all mortise or rim-type cylinder locks whenever the cylinder projects beyond the face of the door or is otherwise accessible to gripping tools.
(Ord. No. 2011.33, 9-22-11)

Sec. R401 GENERAL.

Section R401.1 is hereby amended as follows:

Section R401.1 Application. The provisions of this chapter shall control the design and construction of the foundation and foundation spaces for all buildings. In addition to the provisions of this chapter, the design and construction of foundations in areas prone to flooding as established by Table R301.2 (1) shall meet the provisions of Section R322. Wood foundations shall be designed and installed in accordance with AF&PA WPF. Where a design is not provided, the minimum foundation requirements for stud and concrete masonry bearing walls shall be as set forth in Table R403.1.

Exception: The provisions of this chapter shall be permitted to be used for wood foundations only in the following situations:

1. In buildings that have no more than two floors and a roof.
2. When interior basement and foundation walls are constructed at intervals not exceeding 50 feet (15 240 mm).

Wood foundations in Seismic Design Category D_0, D_1 or D_2 shall be designed in accordance with accepted engineering practice.

Section R401.3 is hereby amended as follows:

R401.3 Drainage. Surface drainage shall be diverted to a storm sewer conveyance or other approved point of collection in accordance with the provisions in the Tempe City Code, Chapter 12. Lots shall be graded to drain surface water away from foundation walls. The grade shall fall a minimum of 6 inches (152 mm) within the first 10 feet (3048 mm).

Exception: Where lot lines, walls, slopes or other physical barriers prohibit 6 inches (152 mm) of fall within 10 feet (3048 mm), drains or swales shall be constructed in accordance with the provisions in the Tempe City Code, Chapter 12 to ensure drainage away from the structure. Impervious surfaces within 10 feet (3048 mm) of the building foundation shall be sloped a minimum of 2 percent away from the building.

(Ord. No. 2011.33, 9-22-11)

Sec. R403 FOOTINGS.

Table R403.1 is hereby amended as follows:

TABLE R403.1
FOUNDATIONS FOR STUD AND CONCRETE MASONRY BEARING WALLS – MINIMUM REQUIREMENTS.

Number of Floors Supported by the Foundation[3]	Thickness of Foundation Wall[2] (inches – Nominal Dimension)		Width of Footing[2,4] (W)\ (inches)		Thickness of Footing (inches)		Depth Below Undisturbed Soil (inches)
	Stud Wall						
	Concrete	Masonry[5]	Stud Wall[1]	Masonry Wall	Stud Wall	Masonry Wall	
1	6	6	12	16	6	8	12
2	8	8	15	20	7	8	18
3	10	8	18	24	8	8	24

For SI: 1 inch = 25.4 mm, 1 pound per square foot = 0.0479 kN/m^2.

1. Interior stud bearing walls may be supported by isolated footings. The footing width and length shall be twice the width shown in this table and the footings shall be spaced not more than 6 feet (1,829mm) on center.
2. A minimum of two (2) #4 reinforcing bars (minimum grade 40) are required in the footing/stem concrete. If metal hold downs are used, one #4 horizontal reinforcing bar must be placed within the top 6 of the stem wall.
3. Foundations may support a roof in addition to the stipulated number of floors. Foundations supporting roofs only shall be as required for supporting only one floor.
4. Isolated columns carrying loads in excess of 750 lbs shall be supported on minimum 4 square feet of footing, with minimum width of 24 inches. Maximum bearing pressure from service loads shall not exceed 1500 psf unless recommended by the soils report.
5. Foundation wall width may not be less than the width of the masonry wall.

(Ord. No. 2011.33, 9-22-11)

Sec. R614 EARTHEN STRUCTURES.

Section R614 is hereby added as follows:

Section R614.1 General. Earthen structures with any site condition may be designed with accepted engineering practice for earthen wall structures and with provisions of this section.

Section R614.1.1 Earthen materials. This section shall establish minimum standards for safety for construction of earthen materials structures, collectively known as adobe, burnt adobe, rammed earth, and hydraulic pressed unit connection.

Section R614.1.2 Professional registration required. Plans and specifications designed under the provisions of R614 shall be prepared by a registered professional architect or engineer licensed in the state for which the project is to be constructed.

Section R614.2 Minimum thickness. This minimum thickness of earthen structures shall be designed to limit tension to zero unless tensile reinforcement is provided. Walls shall be designed to meet forces prescribed by IBC Chapter 16. The measurement of height of walls shall be the distance between points of lateral support. Wall thickness shall be measured from face to face of each wall withe. The thickness of walls using racked joints shall be the surface to surface distance of the mortar joints. The withes of wall sections shall not be combined without cross bonding of the masonry units throughout the structural element. Cross bonding shall mean overlapping of not less than 1/3 of the dimension of the masonry units.

Section R614.3 Support conditions. Earthen structures shall be supported on a solid concrete, solid masonry foundation system the width of which shall be not greater than 1/6 inch narrower than the earthen structure which it supports. Earthen structures shall not be less than 6 inches above adjacent grade.

Section R614.4 Corbelled wall elements. The maximum corbelled projection beyond the face of the wall shall not be more than 4 inches. Such corbelled projections shall add additional thickness to the wall, the opposite face of the wall remaining plane with the primary wall plane.

Section R614.5 Moisture barrier. A moisture barrier equal to 30 lb, asphalt impregnated building paper, or equivalent moisture resistant barrier, shall be installed between the supporting foundation and the earthen material.

Section R614.6 Allowable stresses. Allowable compressive, tensile and shear stresses in earthen structures shall not exceed the values prescribed in table R614.6.A. In determining the stresses, the effects of all loads and conditions of loading and the influences of all forces affecting the design and strength of the several parts shall be considered. Bolt values shall not exceed those set forth in International Building Code Table 2109.3.3.1.

Section R614.6.1 Combined units. In walls composed of different kinds or grades of units, materials or mortars, the maximum stress shall not exceed the allowable stress for the weakest of the combination of units, materials and mortars of which the wall is composed. The net thickness of any facing unit of earthen materials used to resist stress shall not be less than 3 inches (76 mm).

When dissimilar materials, (e.g. concrete masonry or steel), is used to support earth wall construction, such elements shall be structurally isolated from other earth wall elements. The design shall recognize, with specific detailing, the effects shrinkage of the earth wall construction may have on the structural integrity of the structure.

Table R614.6.A
Allowable stresses for empirical design of earthen wall structures

Strength of unit, gross area		Allowable stresses Cross-sectional area	Note 1
Compression	300 psi	Normal loading Concentrated loading	30 psi 45 psi
Modulus of rupture	55 psi	Allowable tension without tensile reinforcing	0 psi
Shear	N/a	With special inspection Without special inspection	8 psi 4 psi
Modulus of elasticity	60,000 psi	Allowable deflection	Less than 1/2%

Notes:
1. Gross cross-sectional area shall be calculated on the actual rather than the nominal dimensions.

Section R614.7 Lateral support. Earthen walls shall be laterally supported in the vertical direction and at intersection with other earthen walls. Support at the top of the wall shall be in accordance with one of the methods in R614.7.1 or R617.7.2.

Section R614.7.1 Bond beams. A continuous bond beam system embedded in the earthen walls, designed to provide lateral support for the walls without the aid of additional bracing elements such as roof diaphragm. Bond beams of concrete or masonry shall be not less than the width of the wall, minus 6 inches (152 mm).

Section R614.7.1.1 Bond beam anchorage. Bond beams shall be anchored to earthen walls at intervals of not over 48 inches (1219 mm) by a connection with shear strength of not less than the shear forces in both directions. The shear between a cast in place concrete bond beam and the earthen wall shall not exceed 1/8 the dead load at the base of the bond beam unless alternate attachment is provided compatible with the allowable stresses in Table R614.6.A or International Building Code Table 2109.3.3.1.

Section R614.7.2 Roof diaphragm. A roof diaphragm complying with other provisions of this code adequate to provide lateral support may be used to brace earthen walls. Anchorage shall be tie beams as specified in R614.7.2.2 or other anchorage methods of equal strength.

Section R614.7.2.1 Tie beams. A tie beam is a beam built into the earthen wall for the purpose of anchoring the roof diaphragm and transferring the lateral perpendicular and parallel forces. Tie beams shall be provided for all earthen walls laterally braced by a roof diaphragm.

Section R614.7.2.2 Tie beam anchorage. Tie beams shall be anchored to earthen walls at intervals of not over 48 inches (1219 mm) by a connection with shear strength of not less than the shear forces in both directions. The shear between a cast in place concrete or masonry tie beam and the earthen wall shall not exceed 1/8 the dead load at the base of the bond beam unless alternate attachment is provided compatible with the allowable stresses in Table R614.6.A or International Building Code Table 2109.3.3.1.

Section R614.8 Lintels. Earthen walls over openings shall be supported by steel lintels, reinforced concrete or masonry lintels or earthen material arches designed to support load imposed. Lintels shall not be supported by rigid structural columns, frames or posts with rigidities greater than the earthen wall unless the design allows for the potential for differential settlements. Small openings less than 12 inches may be constructed without structural lintels.

Section R614.9 Shear walls. Earthen walls subject to in-plane loads shall be designed to be tension free unless tensile reinforcement is provided. Solid panels less than 4 feet (1219 mm) shall not be considered shear walls.

Section R614.10 Opening jambs. Portions of walls between openings shall be constructed with lengths of not less than 1 1/2 times the thickness of the wall in which they occur.

Section R614.11 Freestanding piers. Piers independent of earthen walls shall be designed to support vertical and horizontal loads unless braced by other elements of the structure. Tensile reinforcement shall be provided where tension occurs. When structural posts or columns are provided within the pier or attachments shall be provided to the earthen wall system to laterally secure it.

Section R614.11.1 Pier cap. A solid concrete cap shall be provided at the top of load bearing piers under all concrete loads. The cap shall cover not less than 50% of the top pier.

Section R614.12 Chases. Chases and recesses in earthen walls shall not be deeper than 1/3 the thickness of the wall thickness. The maximum length of a horizontal chase or horizontal projection shall not exceed 4 feet (1219 mm), and shall have at least 8 inches (203 mm) of earthen construction in back of the chases and recesses and between adjacent chases or recesses and at least 12 inches (305 mm) between the chase and the jambs of openings.

Chases and recesses in earthen walls shall be designed and constructed so as not to reduce the required strength or required fire resistance of the wall and in no case shall a chase or recess be permitted within the required area of a pier. Earthen walls directly above chases or recesses wider than 16 inches (406 mm) shall not be supported on non-combustible lintels.

Section R614.13 Stack bond. When the earthen wall is constructed of units, (e.g. adobe brick), units shall not be laid in stack bond. Units shall, in all locations throughout the wall system, overlap the courses below by not less than 1/3 the dimension of the unit.

Exception: Ornamental non-structural elements may be laid in stack bond if properly tied to the main structure.

Section R614.14 Metal reinforcement. All walls shall be anchored at their intersections, at vertical intervals of not more than 16 inches (406 mm) with joint reinforcement of at least 9 gage when using earthen units, (e.g. adobe block). Horizontal reinforcement shall be used throughout the wall system and be continuous at the intersections. Reinforcement used throughout the wall system shall be not more than 4 inches narrower than the wall thickness.

Section R614.15 Veneer. All veneers using earthen materials shall be installed in accordance with this section. Such veneers shall be installed with a non-combustible foundation, over concrete masonry, a backing of wood or cold-formed steel and the veneer shall be not less than 4 inches (101 mm) or greater than 8 inches (203 mm) in thickness.

Section R614.15.1 Anchorage. Earthen units shall be anchored to the supporting wall with a corrosion-resistant veneer tie system mechanically attached to continuous horizontal joint reinforcement continuously installed in the veneer bed joint not less than 16 inches (406 mm) on center vertically. When earth mortar systems are used, the tie system shall prevent the accumulation of mortar at the base of the veneer. Conventional brick ties shall not be used to anchor earth units.

Section R614.15.2 Air space. The veneer shall be separated from the sheathing by an air space of a minimum of 1 inch (25 mm) but not more than 2 inches (51 mm). A weather-resistant membrane of 15 pound asphalt-saturated felt shall be provided except when veneer is applied over concrete masonry or concrete backing.

Section R614.15.3 Flashing. Approved corrosion-resistive flashing shall be provided in the exterior wall envelope in such a manner as to prevent entry of water into the wall cavity or penetration of water into the building structural framing components. The flashing shall extend to the surface of the exterior wall finish and shall be installed to prevent water from reentering the exterior wall envelope. Flashing shall be located beneath the first course of veneer, and at other points of support, including structural

floors, shelf angles and lintels. Approved corrosion-resisting flashing shall be installed at all of the following locations:

1. At top of all exterior window and door openings in such a manner as to be leak proof.
2. At the intersection of chimneys or other masonry construction with frame or stucco walls, with projection lips on both sides under stucco copings.
3. Under and at the ends of masonry, wood or metal copings and sills.
4. Where exterior porches, decks or stairs attach to a wall or floor assembly of wood-frame construction.
5. At wall and roof intersections.

Section R614.15.4 Weep holes. Weep holes shall be provided in the outside withe of masonry walls at a maximum spacing of 33 inches (838 mm) on center. Weep holes shall not be less than 3/16 inches (4.8 mm) in diameter. Weep holes shall be located immediately above the flashing.

Section R614.16 Buttresses. Earthen walls used as buttresses shall not extend beyond an average length perpendicular to the wall to be braced a distance of 6 feet (1830 mm) without consideration to out-of-plane bending of the buttress.

Section R614.17 Gable end walls. Gable end walls shall be constructed using veneer construction as required by R614.15 or shall be provided with lateral bracing to prevent overturn.

Section R614.18 Ledgers. Ledgers shall not be used to support vertical live and dead loads in excess of 75 pounds per lineal foot unless the tension in the wall fur to bending from out-of-plane loads and the eccentric load from the ledger is zero.

Section R614.19 Material standards. The materials used in earthen wall structures shall comply with the following material standards. For each of the tests prescribed in theses standards, five full size sample units shall be selected at random from each lot of units of fraction thereof produced. Mass wall systems such as rammed earth shall provide five tests for each required standard test series.

Section R614.19.1 Manufacturers of earthen materials. Established manufacturers of earthen materials shall certify compliance with these standards. Copies of their periodic testing shall be supplied to the manufacturer to designers and users of earthen materials shall include the actual dimensions of units, not nominal dimensions.

Section R614.19.2 Onsite earthen materials. Earthen units, mortar, rammed earth wall materials mined, mixed, formulated, and/or molded on site shall be tested for compliance with these standards. For individual structures, a set of tests shall be provided for the first 2500 square feet of wall and an additional test for each additional 2500 square feet or portion thereof in the structure. At least one set of tests shall be made for each structure and for each 2500 square feet of patio wall. The fabricator of the materials used in the project shall certify in writing to the building official compliance with these standards. The certification shall include the number of units site molded, size of the units, volume of material used as mortar, dates of fabrication, and results of testing of the material. If materials from established manufacturers and onsite materials are used in the project, copies of records including sources, quantities, and location of use within the structure shall be provided to the building official upon request.

Section R614.19.3 Categories of earthen materials. Type I, II, III, and IV earthen materials are approved for use in construction of projects designed in accordance with R614.

> **Exception:** Type I adobe shall only be used for repairs and small additions in which new walls do not exceed 10% of the surface area of existing walls of Type I construction and for structures constructed of a similar material system and for projects requiring this class of materials to meet historic guidelines.

Section R614.19.3.1 Required plaster veneer. Adobe of Type I and II shall be protected on the exterior with exterior plaster meeting the requirements of IBC Section 2512 applied over wire lath. Type I

and II adobe shall not be used within 4 inches (102 mm) of the floor or at the top of parapet walls or near potential sources of water which may affect the stability of the earth wall system. Other types of adobe may be left unplastered and may be used without separation from the floor.

Section R614.19.3.2 Adobe units and mortar. Moisture resistant stabilized adobe units and mortar shall meet the following testing standards as indicated in Table R614.19.3.2. Type S Portland cement mortar may be used for Type II, III, and IV adobe in lieu of earth mortar.

Table R614.19.3.2

Material type	Dry compression 614.19.3	Wet compression 614.19.4	Modulus of rupture 614.19.5	Absorption <2.5% 614.19.6	Absorption <5.0% 614.19.7	Moisture content 614.19.8.1
I	X		X			X
II	X		X		X	X
III	X		X	X		X
IV		X	X			X

"X" indicates that material must pass the test standards prescribed in the section.

Section R614.19.3.3 dry compression strength. Determine the compressive strength of the required number of samples as required by R614.19 in accordance with the following procedures.

Section R614.19.3.3.1 Dry the specimen. Dry the specimen at a temperature of 85°F +- 15°F (29°C +- 9°C) in an atmosphere having relative humidity of not more than 50 percent. Weigh the specimen at one-day intervals until constant weight is attained.

Section R614.19.3.3.2 Cap the specimen. The specimen may be suitably capped with calcined gypsum mortar or the bearing surfaces may be rubbed smooth and true. Then calcined gypsum is used for capping, conduct the test after the capping has set and the specimen has been dried to constant weight in accordance with item 1 of this section.

Section R614.19.3.3.3 Test the specimen. Test the specimens in the position in which the earthen unit is designed to be used. And bed on and cap with a felt pad not less then one-eighth (1/8) inch (3.2 mm) or more than one-fourth (1/4) inch (6.4 mm) in thickness.

Section R614.19.3.3.4 Testing equipment. The loading head shall completely cover the bearing area of the specimen and the applied load shall be transmitted through a spherical bearing block of proper design. The speed of the moving head of the testing machine shall not be more than 0.05 inches (1.27 mm) per minute.

Section R614.19.3.3.5 Reporting results. Calculate the average compressive strength of the specimens tested and report this as the compressive strength of the block. Units shall have an average dry compressive strength of 300 psi (2068 kPa) and no individual unit may have a strength of less than 250 psi (1724 kPa).

Section R614.19.4 Wet compression strength. Determine the compressive strength of the required number of specimen as required by R614.19 in accordance with the following procedures:

Section R614.19.4.1 Cap the specimen. The specimens may be suitably capped with a capping material compatible with water saturation or the bearing surfaces may be rubbed smooth and true.

Section R614.19.4.2 Wetting the specimen. Submerge the specimen under water for not less than 8 (eight) hours or longer as required, until fully saturated.

Section R614.19.4.3 Test the specimen. Immediately test the specimen in the position in which the earthen unit is designed to be used. Bed on and cap with a felt pad not less than 1/8 inch (3.2 mm) or more than 1/4 inch (6.4 mm) in thickness.

Section R614.19.4.4 Testing equipment. The loading head shall completely cover the bearing area of the specimen and the applied load shall be transmitted through a spherical bearing block of proper design. The speed of the moving head of the testing machine shall not be more than 0.05 inches (1.27 mm) per minute.

Section R614.19.4.5 Reporting results. Calculate the average compressive strength of the specimens tested and report this as the compressive strength of the block. Adobe units shall have an average wet compressive strength of 300 psi (2068 kPa). Five samples shall be tested and no individual unit may have a wet compressive strength of less than 250 psi (1724 kPa).

Section R614.19.5 Modulus of rupture. Adobe units shall have an average modulus or rupture of 50 psi (345 kPa) when tested in accordance with the following procedures. Five samples shall be tested and no individual unit shall have a modulus of rupture less than 35 psi (241 kPa)

Section R614.19.5.1 Support conditions. A cured unit shall be simply supported by 2 inch diameter (51 mm) cylindrical support located 2 inches (51 mm) in from each end and extending the full width of the unit.

Section R614.19.5.2 Loading conditions. A 2 inch diameter (51 mm) cylinder shall be placed at midspan parallel to the supports.

Section R614.19.5.3 Testing procedure. A vertical load shall be applied to the cylinder at the rate of 500 pounds per minute (37 N/s) until failure occurs.

Section R614.19.5.4 modulus of rupture determination. The modulus of rupture shall be determined by the following formula:

Equation R614.19.5.4.1

Fr = 3WLs/2bt2
Where, for this purpose of this section only:

B = width of the test specimen measured parallel to the loading cylinder, inches (mm)
Fr = modulus of rupture, psi (Mpa)
Ls = distance between supports, inches (mm)
T = thickness of the test specimen measured parallel to the distance of load, inches (mm)
W = The applied load at failure, pounds (N)

Section R614.19.6 Absorption less than 2.5%. A 4 inch (102 mm) cube, cut from an adobe unit fired to a constant weight in a ventilated oven at 212° F to 239° F, shall not absorb more then 2 1/2 percent moisture by weight when placed upon a constantly water-saturated, porous surface for 7 days. A minimum of five specimens shall be tested and each specimen shall be cut from a separate unit.

Section R614.19.7 Absorption less than 5.0%. A 4 inch (102 mm) cube, cut from an adobe unit fired to a constant weight in a ventilated oven at 212° F to 239° F, shall not absorb more then 2 1/2 percent moisture by weight when placed upon a constantly water-saturated, porous surface for 7 days. A minimum of five specimens shall be tested and each specimen shall be cut from a separate unit.

Section R614.19.8 Additional requirements. All earthen units shall meet the following requirements:

Section R614.19.8.1 Moisture content requirements. Earthen units shall have a moisture content not exceeding 4 percent by weight at the time of use.

Section R614.19.8.2 Shrinkage cracks. All earthen units shall not contain more than three shrinkage cracks and any single shrinkage cracks shall not exceed 3 inches (76 mm) in length or 1/8 inch (3.2 mm) in width.

Section R614.19.8.3 Soil requirements. Soil used for moisture resisting adobe units and mortar shall be chemically compatible with the stabilizing material. The soil shall contain sufficient clay to bind the particles together without the air of stabilizers. The soil shall contain not more than 0.2 percent of water-soluble salts.

Section R614.19.9 Cement stabilized rammed earth. Cement stabilized rammed earth shall meet the following standards. The installer of the wall system shall comply with the requirements of R614.19.2 for frequency testing.

Section R614.19.9.1 Testing before construction. The installer of cement stabilized rammed earth shall provide the following testing before issuance of a building permit.

Section R614.19.9.2 Materials from a licensed sand and gravel producer. A copy of Proctor ASTM D 698 shall be provided for each soil type and source or combination of sources. Periodic testing as provided by the supplier may be supplied to meet this requirement. The soil shall contain not more than 0.2 percent of water-soluble salts.

Section R614.19.9.3 Material mined and mixed on site. A copy of ASTM D 698, ASTM C 117, ASTM C 136, and ASTM D 4318 shall be provided for each soil type and source or combination of sources. Such testing shall be repeated as required to assure that all materials to be used have been tested and are represented by the tests. The soil shall contain not more than 0.2 percent of water-soluble salts.

Section R614.19.9.4 Testing required during construction. The installer of cement stabilized rammed earth shall provide the following tests made during the construction process. A certified testing laboratory shall provide field density tests for comparison to the pre-construction Proctor ASTM D 698, percent moisture ASTM D 2216, dry density ASTM D 698, and percent moisture ASTM D 1556.

Cement stabilized rammed earth walls shall meet or exceed 95% maximum dry density (ASTM D 698). Samples taken from the wall shall exceed 300 psi compression (ASTM D 1633) 14 days after placement. (Ord. No. 2011.33, 9-22-11)

Sec. R702 INTERIOR COVERING.

Table R702.3.5 is hereby amended as follows:

TABLE R702.3.5
MINIMUM THICKNESS AND APPLICATION OF GYPSUM BOARD

THICKNESS OF GYPSUM BOARD (inches)	APPLICATION	ORIENTATION OF GYPSUM BOARD TO FRAMING	MAXIMUM SPACING OF FRAMING MEMBERS (inches o.c.)	MAXIMUM SPACING OF FASTENERS (inches)		SIZE OF NAILS FOR APPLICATION TO WOOD FRAMING[c]
				Nails[a]	Screws[b]	
1/2	Ceiling	Either direction	16	7	12	13 gage, 1-3/8 long, 19/64 head; 0.098 diameter, 1-1/4 long, annular-ringed; 5d cooler nail, 0.086 diameter, 1-5/8 long, 15/64 head; or gypsum board nail, 0.086 diameter, 1-5/8 long, 9/32 head.
	Ceiling[d]	Perpendicular	24	7	12	
	Wall	Either direction	24	8	12	
	Wall	Either direction	16	8	16	
5/8	Ceiling	Either direction	16	7	12	13 gage, 1-5/8 long, 19/64 head; 0.098 diameter, 1-3/8 long, annular-ringed; 6d cooler nail, 0.092 diameter, 1-7/8 long, ¼ head; or gypsum board nail 0.0915 diameter, 1-7/8 long, 19/64 head.
	Ceiling[e]	Perpendicular	24	7	12	
	Wall	Either direction	24	8	12	
	Wall	Either direction	16	8	16	
Application with adhesive						
1/2 or 5/8	Ceiling	Perpendicular	16	16	16	Same as above for 1/2 and 5/8 gypsum board, respectively
	Ceiling[d]	Either direction	24	12	16	
	Wall	Either direction	24	16	24	

For SI: 1 inch = 25.4 mm.

a. For application without adhesive, a pair of nails spaced not less than 2 inches apart or more than $2^1/_2$ inches apart may be used with the pair of nails spaced 12 inches on center.
b. Screws shall be in accordance with Section R702.3.6. Screws for attaching gypsum board to structural insulated panels shall penetrate the wood structural panel facing not less than $^7/_{16}$ inch.
c. Where cold-formed steel framing is used with a clinching design to receive nails by two edges of metal, the nails shall be not less than $^5/_8$ inch longer than the gypsum board thickness and shall have ringed shanks. Where the cold-formed steel framing has a nailing groove formed to receive the nails, the nails shall have barbed shanks or be 5d, 13½ gage, $1^5/_8$ inches long, $1^5/_{64}$-inch head for $^1/_2$-inch gypsum board; and 6d, 13 gage, $1^7/_8$ inches long, $1^5/_{64}$-inch head for $^5/_8$-inch gypsum board.
d. On ceiling applications to receive a water-based texture material, either hand or spray applied, the gypsum board shall be applied perpendicular to framing. When applying a water-based texture material, the minimum gypsum board thickness shall be $^1/_2$-inch for 16-inch on center framing and ⅝-inch for 24 inch on center framing or $^1/_2$-inch sag-resistant gypsum ceiling board shall be used.
e. Type X gypsum board for garage ceilings beneath habitable rooms shall be installed perpendicular to the ceiling framing and shall be fastened at maximum 6 inches O.C. by minimum $1-^7/_8$ inches 6d coated nails or equivalent drywall screws.

(Ord. No. 2011.33, 9-22-11)

Sec. R1007 CLEAN BURNING FIREPLACES.

Section R1007 is hereby added as follows:

Section R1007.1 Clean Burning Fireplaces. The purpose of this standard is to regulate fireplaces, woodstoves, or other solid-fuel burning devices to reduce the amount of air pollution caused by particulate matter and carbon monoxide.

The effective date of the regulations and prohibitions set forth in this standard took effect on December 31, 1998.

Definitions: For purposes of this standard, the following words and terms shall be defined as follows:

FIREPLACE means a built in place masonry hearth and fire chamber or a factory-built appliance, designed to burn solid fuel or to accommodate gas or electric log insert or similar device, and which is intended for occasional recreational or aesthetic use, not for cooking, heating, or industrial processes.

SOLID FUEL includes but is not limited to wood, coal, or other nongaseous or non-liquid fuels, including those fuels defined by the Maricopa County Air Pollution Control Officer as inappropriate fuel to burn in residential wood-burning devices.

WOODSTOVE means a solid-fuel burning heating appliance including a pellet stove, which is either freestanding or designed to be inserted into a fireplace.

Section R1007.2. Installation restrictions. On or after the effective date, no person, firm or corporation shall construct or install a fireplace or a woodstove, and the building official shall not approve or issue a permit to construct or install a fireplace or a woodstove, unless the fireplace or woodstove complied with one of the following:

1. A fireplace which has a permanently installed gas or electric log insert.

2. A fireplace, woodstove, or other solid-fuel burning appliance which has been certified by the United States Environmental Protection Agency as conforming to 40 Code of Federal Regulations Part 60, Subpart AAA as in effect on July 1, 1990.

3. A fireplace, woodstove or other solid-fuel burning appliance which has been tested and listed by a nationally recognized testing agency to meet performance standards equivalent to those adopted by 40 Code of Federal Regulations Part 60, Subpart AAA as in effect on July 1, 1990.

4. A fireplace, woodstove or other solid-fuel burning appliance which has been determined by the Maricopa County Air Pollution Control Officer to meet performance standards equivalent to those adopted by 40 Code of Federal Regulations Part 60, Subpart AAA as in effect on July 1, 1990.

5. A fireplace which has a permanently installed woodstove insert which complies with subparagraphs 2, 3, or 4 above.

Section R1007.3. The following installations are not regulated by this standard and are not prohibited by this standard:

1. Furnace, boilers, incinerators, kilns, and other similar space heating or industrial process equipment.

2. Cook-stoves, barbecue grills, and similar appliances designed primarily for cooking.

3. Fire pits, barbecue grills, and other outdoor fireplaces.

Section R1007.4. Fireplace or Woodstove Alterations Prohibited:

Section R1007.4 .1. On or after the effective date, no person, firm or corporation shall alter or remove a gas or electric log insert or a woodstove insert from a fireplace for purposes of converting the fireplace to directly burn wood or other solid fuel.

Section R1007.4 .2. On or after the effective date, no person, firm or corporation shall alter a fireplace, woodstove or other solid fuel burning appliance in any manner that would void its certification or operational compliance with the provisions of this standard.

Section R1007.5. Permits Required. In addition to the provisions and restrictions of this standard, construction, installation or alteration of all fireplaces, woodstoves and other gas, electric or solid-fuel burning appliances and equipment shall be done in compliance with provisions of this Code and shall be subject to the permits and inspections.
(Ord. No. 2011.33, 9-22-11)

Sec. M1307 APPLIANCE INSTALLATION.

Section M1307 is hereby amended as follows:

Section M1307.3. Elevation of ignition source. Appliances having an ignition source shall be elevated such that the source of ignition is not less than 18 inches (457 mm) above the floor in garages. For the purpose of this section, rooms or spaces that are not part of the living space of a dwelling unit and that communicate directly with a private garage through openings shall be considered to be part of the private garage.

Exceptions:

1. Elevation of the ignition source is not required for appliances that are listed as flammable vapor resistant and for installation without elevation.

2. Direct-vent appliances that obtain all combustion air directly from the outdoors.

3. Clothes dryers installed in private garages.

Section M1307.7. Liquefied Petroleum Appliances. LPG appliances shall not be installed in an attic, pit or other location that would cause a ponding or retention of gas.
(Ord. No. 2011.33, 9-22-11)

Sec. G2406 APPLIANCE LOCATION.

Section G2406.2 is hereby amended as follows:

Section G2406.2 (303.3). Prohibited locations. Appliances shall not be located in sleeping rooms, bathrooms, toilet rooms, storage closets or surgical rooms, or in a space that opens only into such rooms or spaces, except where the installation complies with one of the following:

1. The appliance is a direct-vent appliance installed in accordance with the conditions of the listing and the manufacturer's instructions.
2. Vented rooms heaters, wall furnaces, vented decorative appliances, vented gas fireplaces, vented gas fireplace heaters and decorative appliances for installation in vented solid fuel-burning fireplaces are installed in rooms that meet the required volume criteria of Section G2407.5.
3. A single wall-mounted unvented room heater is installed in a bathroom and such unvented room heater is equipped as specified in Section G2445.6 and has an input rating not greater than 6,000 Btu/h (1.76 kW). The bathroom shall meet the required volume criteria of Section G2407.5.
4. A single wall-mounted unvented room heater is installed in a bedroom and such unvented room heater is equipped as specified in Section G2445.6 and has an input rating not greater than 10,000 Btu/h (2.93 kW). The bedroom shall meet the required volume criteria of Section G2407.5.
5. The appliance is installed in a room or space that opens only into a bedroom or bathroom, and such room or space is used for no other purpose and is provided with a solid weather-stripped door equipped with an approved self-closing device. All combustion air shall be taken directly from the outdoors in accordance with Section G2407.6.
6. Liquefied Petroleum (LPG) appliances shall not be installed in an attic, pit or other location that would cause ponding or retention of gas.

(Ord. No. 2011.33, 9-22-11)

Sec. G2407 (304) COMBUSTION, VENTILATION AND DILUTION AIR.

Section M2407.1.1 is hereby added as follows:

Section G2407.1.1. Prohibited sources. Combustion air ducts and openings shall not connect appliance enclosures with space in which the operation of a fan may adversely affect the flow of combustion air. Combustion air shall not be obtained from an area in which flammable vapors present a hazard. Fuel-fired appliances shall not obtain combustion air from any of the following rooms or spaces:

1. Sleeping rooms.
2. Bathrooms.
3. Toilet rooms.

Exception: The following appliances may be located in sleeping rooms, bathrooms and toilet rooms:

1. Appliances installed in an enclosure in which all combustion air is taken from the outdoors and the enclosure is equipped with a solid weather-stripped door and self-closing device.
2. Direct-vent appliances that obtain all combustion air directly from the outdoors.

Section M2407.11 is hereby amended as follows:

Section G2407.11 (304.11) Combustion air ducts. Combustion air ducts shall comply with all of the following:

1. Ducts shall be constructed of galvanized steel complying with Chapter 16 or of a material having equivalent corrosion resistance, strength and rigidity.

   Exception: Within dwellings units, unobstructed stud and joist spaces shall not be prohibited from conveying combustion air, provided that not more than one required fireblock is removed.

2. Ducts shall terminate in an unobstructed space allowing free movement of combustion air to the appliances.
3. Ducts shall serve a single enclosure.
4. A single duct shall not serve both upper and lower combustion air openings where both such openings are used. The separation between ducts serving upper and lower combustion air openings shall be maintained to the source of combustion air.
5. Ducts shall not be screened where terminating in an attic space.
6. Horizontal upper combustion air ducts shall not slope downward toward the source of combustion air.
7. The remaining space surrounding a chimney liner, gas vent, special gas vent or plastic piping installed within a masonry, metal or factory-built chimney shall not be used to supply combustion air.

   Exception: Direct-vent gas-fired appliances designed for installation in a solid fuel-burning fireplace where installed in accordance with the manufacturer's instructions.

8. Combustion air intake openings located on the exterior of a building shall have the lowest side of such openings located not less than 12 inches (305 mm) vertically from the adjoining finished ground level.
9. For LPG appliances, any duct serving the lower opening shall be at the floor level and slope to the outdoors without traps or pockets.

(Ord. No. 2011.33, 9-22-11)

Sec. G2408 INSTALLATION.

Section G2408.2 (305) is hereby amended as follows:

Section G2408.2 (305.3). Elevation of ignition source. Equipment and appliances having an ignition source shall be elevated such that the source of ignition is not less than eighteen (18) inches (457 mm) above the floor in hazardous locations and public garages, private garages, repair garages, motor fuel-dispensing facilities and parking garages. For the purpose of this section, rooms or spaces that are

not part of the living space of a dwelling unit and that communicate directly with a private garage through openings shall be considered to be part of the private garage.

Exceptions:

1. Elevation of the ignition source is not required for appliances that are listed as flammable vapor resistant and for installation without elevation.

2. Direct-vent appliances that obtain all combustion air directly from the outdoors.

3. Clothes dryers installed in private garages.

(Ord. No. 2011.33, 9-22-11)

Sec. G2415 (404) PIPING SYSTEM INSTALLATION.

Section G2415.4.1 is hereby added as follows:

G2415.4.1 Underground piping. No gas piping shall be permitted under an asphalt, concrete or other paved surface that adjoins any building or structure unless installed in a gas-tight conduit or other approved method of venting is provided.

The conduit shall be of wrought iron, plastic pipe, steel pipe or other approved conduit material. The conduit shall be protected from corrosion in accordance with Section G2415.9. The interior diameter of the conduit shall be not less than one-half inch larger than the outside diameter of the gas pipe within. The conduit shall extend to a point not less than 12 inches (305 mm) beyond or 4 inches (102 mm) above the paved surface. The ends shall not be sealed.

Section G2415.10 (404.10) is hereby amended as follows:

Section G2415.10 (404.10) Minimum burial depth. Underground piping systems shall be installed a minimum depth of 12 inches (305 mm) below grade, for metal piping, and 18 inches for plastic piping.

Section G2415.10.1 is hereby deleted.

(Ord. No. 2011.33, 9-22-11)

Sec. G2417(406) INSPECTION, TESTING AND PURGING.

Section G2417.4 (406.4) is hereby amended as follows:

Section G2417.4 (406.4) Test pressure measurement. Test pressure shall be measured with a manometer or with a pressure-measuring device designed and calibrated to read, record, or indicate a pressure loss caused by leakage during the pressure test period. The source of pressure shall be isolated before the pressure tests are made.

Section G2417.4.1 (406.4.1) is hereby amended as follows:

Section G2417.4.1 (406.4.1)Test pressure. The test pressure to be used shall be no less than ten (10) pounds per square inch (69 kPa) gauge pressure, or where approved by the building official, the piping and valves may be tested at a pressure of at least six (6) inches (152.4 mm) of mercury, measured with a manometer or slope gauge. For welded piping, and for piping carrying gas at pressures in excess of fourteen (14) inches (0.4 m) water column pressure, the test pressure shall be no less than sixty (60)

pounds per square inch (413 kPa). Where the test pressure exceeds 125 psig (862 kPa gauge), the test pressure shall not exceed a value that produces a hoop stress in the piping greater than 50 percent of the specified minimum yield strength of the pipe.

Section G2417.4.2 is hereby amended as follows:

Section G2417.4.2 Test duration. Test duration shall be not less fifteen (15) minutes or for welded pipe and piping carrying gas at pressures in excess of fourteen (14) inches (0.4 m) water column pressure, the test duration shall be not less than thirty (30) minutes. The duration of the test shall not be required to exceed 24 hours.

Section G2417.4.3 is hereby added as follows:

Section G2417.4.3 Test gauges. Tests required by this Code which are performed utilizing dial gauges shall be limited to gauges having the following pressure increments or graduations.

Section G2417.4.3.1. Required pressure tests of ten (10) pounds (69 kPa) or less shall be performed with gauges having increments of one-tenth (1/10) pound (0.69 kPa) or less.

Section G2417.4.3.2. Required pressure tests exceeding ten (10) pounds (69 kPa) but less than one hundred (100) pounds (690 kPa) shall be performed with gauges having increments of one pound (7 kPa) or less.

Section G2417.4.3.3. Required pressure tests exceeding one hundred (100) pounds (690 kPa) shall be performed with gauges having increments 2 psi (14 kPa) or less.

Section G2417.4.3.4. Pressure tests required by this code, which are performed utilizing dial gauges, shall be limited to a gauge having a maximum gauge rating not exceeding twice the applied test pressure.
(Ord. No. 2011.33, 9-22-11)

Sec. P2503 INSPECTION AND TESTS.

Section P2503.9 is hereby amended as follows:

Section P2503.9. Test gauges. Gauges used for testing shall be as follows:

1. Tests requiring a pressure of 10 psi or less shall utilize a testing gauge having increments of 0.10 psi or less.
2. Tests requiring a pressure of 10 psi but less than or equal to 100 psi shall utilize a testing gauge having increments of 1 psi or less.
3. Tests requiring a pressure of greater than 100 psi shall utilize a testing gauge having increments of 2 psi or less.

Pressure tests required by this code, which are performed utilizing dial gauges, shall be limited to a gauge having a maximum gauge rating not exceeding twice the applied test pressure.
(Ord. No. 2011.33, 9-22-11)

Sec. P2603 STRUCTURAL AND PIPING PROTECTION.

Section P2603.6.1 is hereby amended as follows:

Section P2603.6.1. Sewer depth. Building sewers shall be a minimum of 12 inches (305 mm) below grade.
(Ord. No. 2011.33, 9-22-11)

Sec. P2801 GENERAL.

Section P2801.5.1 is hereby amended as follows:

Section P2801.5.1. Pan size and drain. The pan shall not be less than 1½ inches (38 mm) deep and shall be of sufficient size and shape to receive all dripping or condensate from the tank or water heater. The pan shall be drained by an indirect waste pipe having a minimum diameter of ¾ inch (19 mm) installed with a uniform alignment at a uniform slope in the direction of discharge of not less than one-eighth unit vertical in 12 units' horizontal (one-percent slope). Piping for safety pan drains shall be of those materials listed in Table P2905.5.
(Ord. No. 2011.33, 9-22-11)

Sec. P2803 RELIF VALVES.

Section P2803.6.1 is hereby amended as follows:

Section P2803.6.1. Requirements of discharge pipe. The discharge piping serving a pressure-relief valve, temperature-relief valve or combination valve shall:

1. Not be directly connected to the drainage system.
2. Discharge in a downward direction.
3. Not be smaller than the diameter of the outlet of the valve served and shall discharge full size to the air gap.
4. Serve a single relief device and shall not connect to piping serving any other relief device or equipment.
5. Discharge through an air gap to the floor, to the pan serving the water heater or storage tank, to a waste receptor or to the outdoors.
6. Discharge in a manner that does not cause personal injury or structural damage.
7. Discharge to a termination point that is readily observable by the building occupants.
8. Not be trapped.
9. Be installed to flow by gravity.

10. Terminate not less than 6 inches (152 mm) and not more than 12 inches (610 mm) above finished grade, the floor or waste receptor.
11. Not have a threaded connection at the end of the piping.
12. Not have valves or tee fittings.
13. Be constructed of those materials listed in Section P2904.5 or materials tested, rated and approved for such use in accordance with ASME A112.4.1.

(Ord. No. 2011.33, 9-22-11)

Sec. P2903 WATER-SUPPLY SYSTEM.

Section P2903.7 is hereby amended as follows:

P2903.7 Size of water-service mains, branch mains and risers. The minimum size water service pipe shall be 3/4 inch (19 mm). The size of water service mains, branch mains and risers shall be determined according to water supply demand [gpm (L/m)], available water pressure [psi (kPa)] and friction loss caused by the water meter and developed length of pipe [feet (m)], including equivalent length of fittings. The size of each water distribution system shall be determined according to the methods in Appendix P or when approved by the code official, to design methods conforming to acceptable engineering practice.
(Ord. No. 2011.33, 9-22-11)

Sec. P2904 DWELLING UNIT FIRE SPRINKLER SYSTEMS.

Section P2904 is hereby deleted.

(Ord. No. 2011.33, 9-22-11)

Sec. P3001 GENERAL.

Section P3001.4 is hereby amended as follows:

Section P3001.4. Sewer required. Every building in which plumbing fixtures are installed and all premises having drainage piping shall be connected to a public sewer, where available, or an approved private disposal system in accordance with the Maricopa County Health Department Environmental Service Division. The public sewer may be considered as not being available only when so determined by the Maricopa County Health Department Environmental Service Division.
(Ord. No. 2011.33, 9-22-11)

Sec. E3603 SERVICE, FEEDER AND GROUNDING ELECTRODE CONDUCTOR SIZING.

Table E3603.1 is hereby amended as follows:

Table E3603.1
SERVICE CONDUCTORS AND GROUNDING ELECTRODE CONDUCTOR SIZING

Conductor Types and Sizes for 120/240-Volt and 120/208-Volt, 3-Wire, Single-Phase Dwelling Services and Feeders. Conductor Types RH, RHH, RHW, RHW-2, THHN, THHW, THW, THW-2, THWN, THWN-2, XHHW, XHHW-2, SE, USE, USE-2					
Copper (AWG or kcmil)	Aluminum or Copper-Clad Aluminum (AWG or kcmil)	Service or Feeder Rating (Amperes)		Min. Grounding Electrode Conductor size[a] (AWG)	
		≤ 30°C	> 30°C	Copper	Aluminum
4	2	100	----	8[b]	6[c]
3	1	110	----	8[b]	6[c]
2	1/0	125	100	8[b]	6[c]
1	2/0	150	125	6[c]	4
1/0	3/0	175	150	6[c]	4
2/0	4/0	200	175	4	2
3/0	250	225	200	4	2
4/0	300	250	225	2[d]	1/0[d]
250	350	300	250	2[d]	1/0[d]
350	500	350	300	2[d]	1/0[d]
400	600	400	350	1/0[d]	3/0[d]

a. Where protected by a metal raceway, grounding electrode conductors shall be electrically bonded to the metal raceway at both ends.
b. No. 8 AWG grounding electrode conductors shall be protected with metal conduit or nonmetallic conduit.
c. Where not protected, No. 6 AWG grounding electrode conductors shall closely follow a structural surface for physical protection. The supports shall be spaced not more than 24 inches on center and shall be within 12 inches of any enclosure or termination.
d. Where the sole grounding electrode system is the footing steel as covered in Section E3608.1.2, the grounding electrode conductor shall not be required to be larger than No. 4 copper conductor.

CAUTION - UTILITY COMPANY CONDUCTOR SIZE REQUIREMENTS MAY VARY. CONSULT WITH SERVING UTILITY PRIOR TO INSTALLATION.
(Ord. No. 2011.33, 9-22-11)

Sec. E3701 GENERAL.

Section E3701.1 is hereby amended as follows:

Section E3701.1. Scope. This chapter covers branch circuits and feeders and specifies the minimum required branch circuits, the allowable loads and the required overcurrent protection for branch circuits and feeders that serve less than 100 percent of the dwelling unit load. Feeder circuits that serve 100 percent of the dwelling load shall be sized in accordance with the procedures in Chapter 36. Aluminum conductors smaller than #8 shall not be used for lighting or power circuits indoors.
(Ord. No. 2011.33, 9-22-11)

Sec. E3908 GROUNDING.

Section E3908 is hereby amended as follows:

Section E3908.8. Types of Equipment Grounding Conductors. The equipment grounding conductor run with or enclosing the circuit conductors shall be one or more or a combination of the following:

1. A copper or other corrosion-resistant conductor. This conductor shall be solid or stranded; insulated, covered, or bare; and in the form of a wire or a busbar of any shape.

2. Threaded rigid metal conduit and fittings.

3. Threaded Intermediate metal conduit and fittings.

4. Electrical metallic tubing with an individual equipment grounding conductor.

5. Flexible metal conduit with an individual equipment grounding conductor or where both the conduit and fittings are listed for grounding.

6. Armor of Type AC cable with an individual equipment grounding conductor.

7. Surface metal raceway.

8. Metal-clad cable with an individual equipment grounding conductor or, where both the cable and fittings are listed for grounding.

9. Liquid-tight flexible metal conduit with an individual equipment grounding conductor or where both the conduit and fittings are listed for grounding.

(Ord. No. 2011.33, 9-22-11)

CHAPTER 42 SWIMMING POOLS

Section E4201.2 is hereby amended as follows:

E4201.2 Definitions.

PERMANENTLY INSTALLED SWIMMING, WADING, IMMERSION AND THERAPEUTIC POOLS. Those that are constructed in the ground or partially in the ground, and all others capable of holding water with a depth greater than 18 inches (430 mm), and all pools installed inside of a building, regardless of water depth, whether or not served by electrical circuits of any nature.

Sec. E4203 EQUIPMENT LOCATION AND CLEARANCES.

Section E4203.8 is hereby amended as follows:

E4203.8 Mechanical and electrical equipment location. Mechanical and electrical equipment not addressed in other sections in Chapter 42, shall not be permitted within the area extending 6 feet (1.83 m) horizontally from the inside wall of the pool.

Exception: Listed swimming pool covers where the electrical equipment is part of the total assembly.

(FPN): In determining the above dimension, the distance to be measured is the shortest path to the equipment without piercing a floor, wall, ceiling, doorway with hinged or sliding door, window opening, or other similar effective permanent barrier.

(Ord. No. 2011.33, 9-22-11)

Sec. E4302 POWER SOURCES

Section E4302.3 is hereby amended as follows:

E4302.3 Bell and signal transformers. In dwelling units, bell and signal transformers shall not be installed in attics, closets or in any inaccessible concealed place.
(Ord. No. 2011.33, 9-22-11)

Sec. AG101 GENERAL

Appendix Section AG101.2 is hereby amended as follows:

AG101.2 Pools in flood hazard areas. Pools that are located in flood hazard areas established by Table R301.2(1), including above-ground pools, on-ground pools and in-ground pools that involve placement of fill, shall comply with Tempe City Code, Chapter 12.

Appendix Section AG101.2.1 is hereby amended as follows:

AG101.2.1 Pools located in designated storm water retention areas. Where pools are located in design storm water retention areas, the construction of the pool shall comply with Tempe City Code, Chapter 12.

Appendix Section AG102 is hereby amended as follows:

SWIMMING POOL. Any structure intended for swimming or recreational bathing that contains water over 18 inches (430 mm) deep. This includes in-ground, aboveground, and on-ground swimming pools, hot tubs, and spas.

Appendix Section AG105.2 is hereby amended as follows:

Section AG105.2. Outdoor swimming pool.

1. The top of the barrier shall be at least 5 feet (1525 mm) above grade measured on the side of the barrier that faces away from the swimming pool. The maximum vertical clearance between grade and the bottom of the barrier shall be 2 inches (51mm) measured on the side of the barrier that faces away from the swimming pool. Where the top of the pool structure is above grade, such as an aboveground pool, the barrier may be at ground level, such as the pool structure, or mounted on the top of the pool structure. Where the barrier is mounted on top of the pool structure, the maximum vertical clearance between the top of the pool structure and the bottom of the barrier shall be 4 inches (102 mm).
2. N/C
3. N/C
4. N/C

5. N/C
6. N/C
7. N/C
8. N/C
9. Where a wall of a dwelling serves as part of the barrier, one of the following conditions shall be met:
   9.1 The pool shall be equipped with a powered safety cover in compliance with ASTM F 1346; or
   9.2 Doors with direct access to the pool through that wall shall be equipped with an alarm which produces an audible warning when the door and/or its screen, if present, are opened. The alarm shall be listed and labeled in accordance with UL 2017. The audible alarm shall activate within 7 seconds and sound continuously for a minimum of 30 seconds after the door and/or its screen, if present, are opened and be capable of being heard throughout the house during normal household activities. The alarm shall automatically reset under all conditions. The alarm system shall be equipped with a manual means, such as touch pad or switch, to temporarily deactivate the alarm for a single opening. Deactivation shall last for not more than 15 seconds. The deactivation switch(es) shall be located at least 54 inches (1372 mm) above the threshold of the door; or
   9.3 Other means of protection, such as self-closing doors with self-latching devices, which are approved by the governing body, shall be acceptable as long as the degree of protection afforded is not less than the protection afforded by Item 9.1 or 9.2 described above.
10. N/C
    10.1 N/C
    10.2 N/C

Appendix Section AG105.5 is hereby amended as follows:

Section AG105.5. Barrier exceptions:

1. Spas or hot tubs with a safety cover which complies with ASTM F 1346, as listed in Section AG107, shall be exempt from the provisions of this appendix.
2. Where the premises upon which a swimming pool, spa, or hot tub is located adjoins that body of water recorded as Tract S of The Lakes, an enclosure parallel to the bank is not required; provided, that an abutting enclosure, conforming to AG105, extends horizontally to the lakeside edge of the lake bank or beyond. For purposes of this exception, the word abutting shall mean terminating at the point of contact with the lakeside edge of the bank.

Appendix Section AG105.6 is hereby added as follows:

Section AG105.6 Unenclosed pools. It is hereby declared to be a public nuisance and dangerous to the public health, safety, and welfare to maintain an outdoor swimming pool, spa or hot tub in the city unless enclosed in accordance with AG105, It shall be the responsibility of both the property owner and the occupant of the premises to install and maintain the fences, locks, latches, alarms, and gates in good condition and proper working order when water is in the pool, and either or both may be deemed in violation of this chapter for failure to do so.

Appendix Section AG105.7 is hereby added as follows:

Section AG105.7. Prerequisites to issuance of building permit. A building permit shall not be issued for any swimming pool, spa or hot tub unless the plans for such pool provide for an enclosure as required by this article.

Appendix Section AG105.8 is hereby added as follows:

Section AG105.8. Final inspection and approval. No swimming pool, spa or hot tub shall be filled in whole or in part with water unless the pool enclosure has been installed in accordance with this article and approved by the Community Development Director or authorized representative.
(Ord. No. 2011.33, 9-22-11)

Sec. Appendix, K102 AIR-BORNE SOUND

Appendix Section AK102.1 is hereby amended as follows:

Section AK102.1 General. Airborne sound insulation for walls and floor-ceiling assemblies separating dwelling units from each other shall meet a Sound Transmission Class (STC) rating of no less than 50 (45 if field tested) when tested in accordance with ASTM E 90. Penetrations or openings in construction assemblies for piping; electrical devices; recessed cabinets; bathtubs; soffits; or heating, ventilation or exhaust ducts shall be sealed, lined, insulated or otherwise treated to maintain the required rating. Dwelling unit entrance doors, which share a common space, shall be tight fitting to the frame and sill.

Appendix Section AK103.1 is hereby amended as follows:

Section AK103.1. General. Floor/ceiling assemblies between dwelling units or between a dwelling unit and a public or service area within a structure shall have an Impact Insulation Class (IIC) of no less than 50 (45 if field tested) when tested in accordance with ASTM E 492.
(Ord. No. 2011.33, 9-22-11)

ARTICLE IV. INTERNATIONAL EXISTING BUILDING CODE

Sec. 8-400. Adopted; where filed; amendments.

(a) That certain document known as the "International Existing Building Code, 2009 Edition," which has been published as a code in book form by the International Code Council, chapters two through fifteen and appendix chapters A and B, three (3) copies with amendments of which are on file in the office of the City Clerk.
(Ord. No. 2011.33, 9-22-11)

Charter reference—Adoption by reference, § 2.14.
State law reference—Adoption by reference, A.R.S. § 9-801 et seq.

Sec. 202 General Definitions.

Section 202 is hereby amended as follows:

EXISTING BUILDING. A building for which a certificate of occupancy has been issued.
(Ord. No. 2011.33, 9-22-11)

Sec. 301 General.

Section 301.1 is hereby amended as follows:

Section 301.1 Scope. The provisions of this chapter shall control the alteration, repair, addition and change of occupancy of existing structures, including historic and moved structures as referenced in the Tempe Administrative Code, Section 101.4.7.2.

EXCEPTION: Existing bleachers, grandstands and folding and telescopic seating shall comply with ICC 300-02.

Section 301.1.1 Compliance with other methods. Alterations, repairs, additions and changes of occupancy to existing structures shall comply with the provisions of this chapter or with one of the methods provided in the Tempe Administrative Code, Section 101.4.7.1.
(Ord. No. 2011.33, 9-22-11)

Sec. 401 General.

Section 401.1 is hereby amended as follows:

Section 401.1 Scope. The provisions of this chapter shall be used in conjunction with Chapters 5 through 12 and shall apply to the alteration, repair, addition and change of occupancy of existing structures, including historic and moved structures, as referenced in the Tempe Administrative Code, Section 101.4.7.3. The work performed on an existing building shall be classified in accordance with this chapter.

Section 401.1.1 is hereby amended as follows:

Section 401.1.1 Compliance with other alternatives. Alterations , repairs , additions and changes of occupancy to existing structures shall comply with the provisions of Chapters 4 through 12 or with one of the alternatives provided in the Tempe Administrative Code, Section 101.4.7.1.
(Ord. No. 2011.33, 9-22-11)

Sec. 406 Change of Occupancy.

Section 406.1 is hereby amended as follows:

Section 406.1. Scope. Change of occupancy provisions apply where the activity is classified as a change of occupancy as defined in Chapter 2 and where the building has been legally occupied for at least one year.
(Ord. No. 2011.33, 9-22-11)

Sec. 506 Structural.

Section 506.2.2.1 is hereby amended as follows:

Section 506.2.2.1 Evaluation. The building shall be evaluated by a registered design professional, and the evaluation findings shall be submitted to the code official. The evaluation shall establish whether the damaged building, if repaired to its predamaged state, would comply with the provisions of the International Building Code, except that the seismic design criteria shall be the reduced IBC level seismic forces specified in the Tempe Administrative Code, Section 101.4.7.5.2.

Section 506.2.2.3 is hereby amended as follows:

Section 506.2.2.3 Extent of repair for noncompliant buildings. If the evaluation does not establish that the building in its predamage condition complies with the provisions of Section 506.2.2.1, then the building shall be rehabilitated to comply with the provisions of this section. The wind load for the repair and rehabilitation shall be those required by the building code in effect at the time of original construction, unless the damage was caused by wind, in which case the wind loads shall be in accordance with the International Building Code. The seismic loads for this rehabilitation design shall be those required by the building code in effect at the time of original construction, but not less than the reduced-level seismic forces specified in the Tempe Administrative Code, Section 101.4.7.5.2.
(Ord. No. 2011.33, 9-22-11)

Sec. 606 Structural.

Section 606.2.1 is hereby amended as follows:

Section 606.2.1 Wall anchors for concrete and masonry buildings. Where a permit is issued for reroofing more than 25 percent of the roof area of a building assigned to Seismic Design Category D, E or F with a structural system consisting of concrete or reinforced masonry walls with a flexible roof diaphragm or unreinforced masonry walls with any type of roof diaphragms, the work shall include installation of wall anchors at the roof line to resist the reduced International Building Code level seismic forces as specified in the Tempe Administrative Code, Section 101.4.7.5.2 and design procedures of Section 101.4.7.5, unless an evaluation demonstrates compliance of existing wall anchorage.

Section 606.3.1 is hereby amended as follows:

Section 606.3.1 Bracing for unreinforced masonry bearing wall parapets. Where a permit is issued for reroofing for more than 25 percent of the roof area of a building assigned to Seismic Design Category D, E or F that has parapets constructed of unreinforced masonry, the work shall include installation of parapet bracing to resist the reduced International Building Code level seismic forces as specified in the Tempe Administrative Code, Section 101.4.7.5.2, unless an evaluation demonstrates compliance of such items.
(Ord. No. 2011.33, 9-22-11)

Sec. 807 Structural.

Section 807.4.2 is hereby amended as follows:

Section 807.4.2 Substantial structural alteration. Where more than 30 percent of the total floor and roof areas of the building or structure have been or are proposed to be involved in structural alteration within a 12-month period, the evaluation and analysis shall demonstrate that the altered building or structure complies with the International Building Code for wind loading and with reduced International Building Code level seismic forces as specified in the Tempe Administrative Code, Section 101.4.7.5.2 for seismic loading. For seismic considerations, the analysis shall be based on one of the procedures specified in Section 101.4.7.5. The areas to be counted toward the 30 percent shall be those areas tributary to the vertical load-carrying components, such as joists, beams, columns, walls and other structural components that have been or will be removed, added or altered, as well as areas such as mezzanines, penthouses, roof structures and in-filled courts and shafts.

Section 807.4.3 is hereby amended as follows:

Section 807.4.3 Limited structural alteration. Where not more than 30 percent of the total floor and roof areas of the building are involved in structural alteration within a 12-month period, the evaluation and analysis shall demonstrate that the altered building or structure complies with the loads applicable at the time of the original construction or of the most recent substantial structural alteration as defined by Section 807.4.2. Any existing structural element whose seismic demand-capacity ratio with the alteration considered is more than 10 percent greater than its demand-capacity ratio with the alteration ignored shall comply with the reduced International Building Code level seismic forces as specified in the Tempe Administrative Code, Section 101.4.7.5.2.
(Ord. No. 2011.33, 9-22-11)

Sec. 907 Structural.

Section 907.3.1 is hereby amended as follows:

Section 907.3.1 Compliance with the International Building Code level seismic forces. Where a building or portion thereof is subject to a change of occupancy that results in the building being assigned to a higher occupancy category based on Table 1604.5 of the International Building Code ; or where such change of occupancy results in a reclassification of a building to a higher hazard category as shown in Table 912.4; or where a change of a Group M occupancy to a Group A, E, I-1, R-1, R-2 or R-4 occupancy with two-thirds or more of the floors involved in Level 3 alteration work, the building shall comply with the requirements for International Building Code level seismic forces as specified in the Tempe Administrative Code, Section 101.4.7.5.1 for the new occupancy category.

Exceptions:

1. Group M occupancies being changed to Group A, E, I-1, R-1, R-2 or R-4 occupancies for buildings less than six stories in height and in Seismic Design Category A, B or C.
2. Where approved by the code official, specific detailing provisions required for a new structure are not required to be met where it can be shown that an equivalent level of performance and seismic safety is obtained for the applicable occupancy category based on the provision for reduced International Building Code level seismic forces as specified in the Tempe Administrative Code, Section 101.4.7.5.2.
3. Where the area of the new occupancy with a higher hazard category is less than or equal to 10 percent of the total building floor area and the new occupancy is not classified as Occupancy Category IV. For the purposes of this exception, buildings occupied by two or more occupancies not included in the same occupancy category, shall be subject to the provisions of Section 1604.5.1 of the International Building Code. The cumulative effect of the area of occupancy changes shall be considered for the purposes of this exception.

(Ord. No. 2011.33, 9-22-11)

Sec. 1001 General.

Section 1001.1 is hereby amended as follows:

Section 1001.1 Scope. An addition to a building or structure shall comply with the building, plumbing, electrical, and mechanical codes and all other codes and standards for new construction, without requiring the existing building or structure to comply with any requirements of those codes or of these provisions.

Exception: In flood hazard areas, the existing building is subject to the requirements of Section 1003.5.

All additions to existing buildings or structures and all buildings or structures that are expanded

by an addition(s) shall be provided with an automatic fire protection system complying with the International Building Code Section 903.3 as applicable.

Exception: An existing non-sprinklered building or structure and additions to such existing building, provided the occupancy of the existing building is not changed, the addition is the same occupancy, and the total area of all such additions to the building do not exceed 1000 square feet.

(Ord. No. 2011.33, 9-22-11)

Sec. 1003 Structural.

Section 1003.3.1 is hereby amended as follows:

Section 1003.3.1 Vertical addition. Any element of the lateral-force-resisting system of an existing building subjected to an increase in vertical or lateral loads from the vertical addition shall comply with the International Building Code wind provisions and the International Building Code level seismic forces specified in the Tempe Administrative Code, Section 101.4.7.5.1 of this code.

Section 1003.3.2 is hereby amended as follows:

Section 1003.3.2 Horizontal addition. Where horizontal additions are structurally connected to an existing structure, all lateral-force-resisting elements of the existing structure affected by such addition shall comply with the International Building Code wind provisions and the International Building Code level seismic forces specified in the Tempe Administrative Code, Section 101.4.7.5.1 of this code.

(Ord. No. 2011.33, 9-22-11)

Sec. 1301 General.

Section 1301.1 is hereby amended as follows:

Section 1301.1 Scope. The provisions of this chapter shall apply to the alteration, repair, addition and change of occupancy of existing structures, including historic and moved structures, as referenced in the Tempe Administrative Code, Section 101.4.7.4. The provisions of this chapter are intended to maintain or increase the current degree of public safety, health and general welfare in existing buildings while permitting repair, alteration, addition and change of occupancy without requiring full compliance with Chapters 4 through 12, except where compliance with other provisions of this code is specifically required in this chapter.

Section 1301.1.1 is hereby amended as follows:

Section 1301.1.1 Compliance with other methods. Alterations, repairs, additions and changes of occupancy to existing structures shall comply with the provisions of this chapter or with one of the methods provided in the Tempe Administrative Code, Section 101.4.7.1.

Section 1301.2 is hereby amended as follows:

*Section 1301.2 Applicability***.** Structures existing prior to September 1, 2011 in which there is work involving additions, alterations, or changes of occupancy shall be made to conform to the requirements of this chapter or the provisions of Chapters 4 through 12. The provisions of Sections 1301.2.1 through 1301.2.5 shall apply to existing occupancies that will continue to be, or are proposed to be, in Groups A, B, E, F, M, R, and S. These provisions shall not apply to buildings with occupancies in Group H or Group I.

Section 1301.3.1 is hereby amended as follows:

Section 1301.3.1 Hazards. Where the code official determines that an unsafe condition exists as provided for in Section 116, such unsafe condition shall be abated in accordance with the Tempe Administrative Code, Section 108.
(Ord. No. 2011.33, 9-22-11)

Sec. 1407 Automatic sprinkler system.

Section 1407.1 is hereby amended as follows:

Section 1407.1 Completion before occupancy. In portions of a building where an automatic sprinkler system is required by this code, it shall be unlawful to occupy those portions of the building until the automatic sprinkler system installation has been tested and approved, except as provided in the Tempe Administrative Code, Section 107.4.
(Ord. No. 2011.33, 9-22-11)

Appendix Sec. A202 Scope.

Appendix Section A202 is hereby amended as follows:

The provisions of this chapter shall apply to wall anchorage systems that resist out-of-plane forces and to collectors in existing reinforced concrete or reinforced masonry buildings with flexible diaphragms. Wall anchorage systems that were designed and constructed in accordance with the 2003 or 2006 International Building Code shall be deemed to comply with these provisions.
(Ord. No. 2011.33, 9-22-11)

Appendix Sec. A502 SCOPE

Appendix Section A502 is hereby amended as follows:

The provisions of this chapter shall apply to all buildings having concrete floors or roofs supported by reinforced concrete walls or by concrete frames and columns. This chapter shall not apply to buildings with roof diaphragms that are defined as flexible diaphragms by the building code, and shall not apply to concrete frame buildings with masonry infilled walls.

Buildings that were designed and constructed in accordance with the seismic provisions of the

2003 or 2006 International Building Code or later editions of these codes shall be deemed to comply with these provisions, unless the seismicity of the region has increased since the design of the building.
(Ord. No. 2011.33, 9-22-11)

Appendix Sec. A506 Tier 2 Analysis Procedure.

Appendix Section A506 is hereby amended as follows:

Section A506.3 Analysis procedure. A structural analysis shall be performed for all structures in accordance with the requirements of the building code, except as modified in Section A506. The response modification factor, R, shall be selected based on the type of seismic-force-resisting system employed and shall comply with the requirements of the Tempe Administrative Code, Section 101.4.7.1.
(Ord. No. 2011.33, 9-22-11)

ARTICLE V. INTERNATIONAL MECHANICAL CODE

Sec. 8-500. Adopted; where filed; amendments.

(a) That certain document known as the "International Mechanical Code, 2009 Edition," which has been published as a code in book form by the International Code Council, chapters two through nine, chapters eleven through fifteen and appendix chapter A inclusive, three (3) copies with amendments of which are on file in the office of the City Clerk.
(Ord. No. 2011.33, 9-22-11)

Charter reference—Adoption by reference, § 2.14.
State law reference—Adoption by reference, A.R.S. § 9-801 et seq.

Sec. 202 GENERAL DEFINITIONS.

Section 202 is hereby amended as follows:

SMOKE DETECTOR. An approved listed and labeled device that senses visible or invisible particles of combustion.
(Ord. No. 2011.33, 9-22-11)

Sec. 303 EQUIPMENT AND APPLIANCE LOCATION.

Section 303.3 is hereby amended as follows:

Section 303.3 Prohibited locations. Fuel-fired appliances shall not be located in, or obtain combustion air from, any of the following rooms or spaces:

1. Sleeping rooms.
2. Bathrooms.
3. Toilet rooms.
4. Storage closets.
5. Surgical rooms.
6. Any room operating under negative pressure unless the appliances are listed for that use.

Exceptions: This section shall not apply to the following appliances:

1. Direct-vent appliances that obtain all combustion air directly from the outdoors.
2. Solid fuel-fired appliances provided that the room is not a confined space and the building is not of unusually tight construction.
3. Appliances installed in a dedicated enclosure in which all combustion air is taken directly from the outdoors, in accordance with Chapter 7. Access to such enclosure shall be through a solid door, weather-stripped in accordance with the exterior door air leakage requirements of the International Energy Conservation Code and equipped with an approved self-closing device.

Section 303.7 is hereby amended as follows:

Section 303.7 Pit locations. Appliances installed in pits or excavations shall not come in contact with the surrounding soil. The sides of the pit or excavation shall be held back a minimum of 12 inches

(305 mm) from the appliance. Where the depth exceeds 12 inches (305 mm) below adjoining grade, the walls of the pit or excavation shall be lined with concrete or masonry. Such concrete or masonry shall extend a minimum of 4 inches (102 mm) above to adjacent grade and shall have sufficient lateral load-bearing capacity to resist collapse. The appliance shall be protected from flooding in an approved manner. Liquefied petroleum (LPG) appliances shall not be installed in a pit, attic or other location that would cause a ponding or retention of gas.
(Ord. No. 2011.33, 9-22-11)

Sec. 304. INSTALLATION.

Section 304.3 is hereby amended as follows:

Section 304.3 Elevation of ignition source. Equipment and appliances having an ignition source and located in hazardous locations and public garages, private garages, repair garages, automotive motor fuel-dispensing facilities and parking garages shall be elevated such that the source of ignition is not less than 18 inches (457 mm) above the floor surface on which the equipment or appliance rests. For the purpose of this section, rooms or spaces that are not part of the living space of a dwelling unit and that communicate directly with a private garage through openings shall be considered to be part of the private garage.

Exceptions:

1. Elevation of the ignition source is not required for appliances that are listed as flammable vapor resistant and for installation without elevation.
2. Direct-vent appliances that obtain all combustion air directly from the outdoors.
3. Clothes dryers installed in private garages.

Section 304.10 is hereby amended as follows:

Section 304.10 Clearances from grade. Equipment and appliances installed at grade level shall be supported on a level concrete slab or other approved material extending a minimum of 3 inches (76 mm) above finished grade or shall be suspended a minimum of 6 inches (152 mm) above finished grade. Such support shall be in accordance with the manufacturer's installation instructions.
(Ord. No. 2011.33, 9-22-11)

Sec. 401 GENERAL.

Section 401.4.1 is hereby amended as follows:

Section 401.4.1. Intake openings. Air intake openings shall comply with all of the following:

1. Intake openings shall be located a minimum of 10 feet (3048 mm) from lot lines or buildings on the same lot. Where openings front on a street or public way, the distance shall be measured to the centerline of the street or public way.
2. Mechanical and gravity outdoor air intake openings shall be located not less than 10 feet (3048 mm) horizontally from any hazardous or noxious contaminant source, such as vents, streets, alleys, parking lots and loading docks, except as specified in Item 3 or Section 501.2.1.
3. Intake openings shall be located not less than 3 feet (914 mm) below contaminant sources where such sources are located within 10 feet (3048 mm) of the opening.
4. Intake openings on structures in flood hazard areas shall be at or above the design flood level.

The exhaust from a bathroom or kitchen in a residential dwelling shall not be considered to be a hazardous or noxious contaminant.

(Ord. No. 2011.33, 9-22-11)

Sec. 506 COMMERCIAL KITCHEN HOOD VENTILATION SYSTEM DUCTS AND EXHAUST EQUIPMENT.

Section 506.3.10.4 is hereby amended as follows:

Section 506.3.10.4 Non-fire-resistance-rated roof/ceiling assembly penetration. A duct enclosure for a grease duct that penetrates only a non-fire-resistant-rated roof/ceiling assembly and only passes through the attic space may have the total thickness of the required fire-resistive material installed on the duct side of the duct enclosure.
(Ord. No. 2011.33, 9-22-11)

Sec. 606 SMOKE DETECTION SYSTEMS CONTROL.

Section 606.2 is hereby amended as follows:

Section 606.2 Where required. Smoke detectors shall be installed where indicated in Sections 606.2.1 through 606.2.3.

Exceptions:

1.Smoke detectors shall not be required where air distribution systems are incapable of spreading smoke beyond the enclosing walls, floors and ceilings of the room or space in which the smoke is generated.

2.Evaporative coolers which supply 100% outside air.

Section 606.2.1 Return air systems. Smoke detectors shall be installed in air distribution systems with a design capacity greater than 2,000 cfm (0.9 m^3/s) in the return air ducts or plenum upstream of any filters, exhaust air connections, outdoor air connections, or decontamination equipment and appliances or in the main supply air duct or plenum served by such air distribution system.

Exception: Smoke detectors are not required in the main supply air or return air system where all portions of the building served by the air distribution system are protected by area smoke detectors connected to a fire alarm system in accordance with the *International Fire Code*. The area smoke detector system shall comply with Section 606.4.

Section 606.2.2 Common supply and return air systems. Where multiple air-handling systems share a common supply air or return air ducts or plenums with a combined design capacity greater than 2,000 cfm (0.9 m^3/s), the supply air or the return air system shall be provided with smoke detectors in accordance with Section 606.2.1.

Section 606.2.3 Supply air or return air risers. Where supply air or return air risers serve two or more stories and serve any portion of a supply air or return air system having a design capacity greater than 15,000 cfm (7.1 m^3/s), smoke detectors shall be installed at each story. Such smoke detectors shall be located upstream of the connection between the supply air or return air riser and any air ducts or plenums.
(Ord. No. 2011.33, 9-22-11)

Sec. 902 MASONRY FIREPLACES.

Section 902.1 is hereby amended as follows:

Section 902.1 General. Masonry fireplaces shall be constructed in accordance with the International Building Code and comply with Section 928 of this code.
(Ord. No. 2011.33, 9-22-11)

Sec. 903 FACTORY-BUILT FIREPLACES.

Section 903.1 is hereby amended as follows:

Section 903.1 General. Factory-built fireplaces shall be listed and labeled and shall be installed in accordance with the conditions of the listing and comply with Section 928. Factory-built fireplaces shall be tested in accordance with UL 127.
(Ord. No. 2011.33, 9-22-11)

Sec. 904. PELLET FUEL-BURNING APPLIANCES.

Section 904.1 is hereby amended as follows:

Section 904.1 General. Pellet fuel-burning appliances shall be listed and labeled in accordance with ASTM E 1509 and shall be installed in accordance with the terms of the listing and comply with Section 928.
(Ord. No. 2011.33, 9-22-11)

Sec. 905 FIREPLACE STOVES AND ROOM HEATERS.

Section 905.1 is hereby amended as follows:

Section 905.1 General. Fireplace stoves and solid-fuel-type room heaters shall be listed and labeled and shall be installed in accordance with the conditions of the listing and comply with Section 928. Fireplace stoves shall be tested in accordance with UL 737. Solid-fuel-type room heaters shall be tested in accordance with UL1482. Fireplace inserts intended for installation in fireplaces shall be listed and labeled in accordance with the requirements of UL1482 and shall be installed in accordance with the manufacturer’s installation instructions and comply with Section 928.
(Ord. No. 2011.33, 9-22-11)

Sec. 928 SOLID FUEL-BURNING EQUIPMENT OR FIREPLACE RESTRICTIONS.

Section 928 is hereby added as follows:

Section 928.1 Definitions. For the purposes of this section, the following words and terms shall have the meaning ascribed thereto:

FIREPLACE: Means a built-in-place masonry hearth and fire chamber or a factory built appliance, designed to burn solid fuel or to accommodate gas or electric log insert or similar device, and which is intended for occasional recreational or aesthetic use, not for cooking, heating, or industrial processes.

SOLID FUEL: Means and includes, but is not limited to, wood, coal, or other nongaseous or non-liquid fuels, including those fuels defined by the Maricopa County Air Pollution Control Officer as "inappropriate fuel" to burn in residential wood burning devices.

WOOD STOVE: Means a solid-fuel-burning heating appliance including a pellet stove, which is either freestanding or designed to be inserted into a fireplace.

Section 928.2 General. On or after December 31, 1998, no person, firm, or corporation shall construct or install a fireplace or a woodstove, and the city shall not approve or issue a permit to construct or install a fireplace or a woodstove, unless the fireplace or woodstove complies with one of the following:

1. A fireplace which has permanently installed gas or electric log insert;
2. A fireplace, woodstove, or other solid-fuel-burning appliance which has been certified by the United States Environmental Protection Agency as conforming to 40 Code of Federal Regulations Part 60, Subpart AAA;
3. A fireplace, woodstove, or other solid-fuel-burning appliance that has been tested and listed by a nationally recognized testing agency to meet performance standards equivalent to those adopted by 40 Code of Federal Regulations Part 60, Subpart AAA;
4. A fireplace, woodstove, or other solid-fuel-burning appliance that has been determined by the Maricopa County Air Pollution Control Officer to meet performance standards equivalent to those adopted by 40 Code of Federal Regulations Part 60, Subpart AAA; or
5. A fireplace that has a permanently installed woodstove insert that complies with paragraphs 2, 3, or 4 above.

Exceptions: The following installations are not regulated and are not prohibited by this section:

1. Furnaces, boilers, incinerators, kilns, and other similar space heating or industrial process equipment;
2. Cook stoves, barbecue grills, and similar appliances designed primarily for cooking; and
3. Fire pits, barbecue grills, and other outdoor fireplaces.

Fireplaces constructed or installed on or after December 31, 1998, that contain a gas or electric log insert or a woodstove insert, shall not be altered to directly burn wood or any other solid fuel. On or after December 31, 1998, no person, firm, or corporation shall alter a fireplace, woodstove, or other solid-fuel-burning appliance in any manner that would void its certification or operational compliance with the provisions of this section.

Fireplaces constructed or installed on or after December 31, 1998, shall not be altered without first obtaining a permit from the city to insure compliance with this section.
(Ord. No. 2011.33, 9-22-11)

ARTICLE VI. INTERNATIONAL PLUMBING CODE

Sec. 8-600. Adopted; where filed; amendments.

(a) That certain document known as the "International Plumbing Code, 2009 Edition" which has been published as a code in book form by the International Code Council, chapters two through fifteen and appendix chapters C and E inclusive, three (3) copies with amendments of which are on file in the office of the City Clerk.
(Ord. No. 2011.33, 9-22-11)

Charter reference—Adoption by reference, § 2.14.
State law reference—Adoption by reference, A.R.S. § 9-801 et seq.

Sec. 312 TESTS AND INSPECTIONS.

Section 312.1.1 is hereby amended as follows:

Section 312.1.1 Test gauges. Gauges used for testing shall be as follows:

1. Tests requiring a pressure of 10 psi (69 kPa) or less shall utilize a testing gauge having increments of 0.10 psi (0.69 kPa) or less.
2. Tests requiring a pressure of greater than 10 psi (69 kPa) but less than or equal to 100 psi (689 kPa) shall utilize a testing gauge having increments of 1 psi (6.9 kPa) or less.
3. Tests requiring a pressure of greater than 100 psi (689 kPa) shall utilize a testing gauge having increments of 2 psi (14 kPa) or less.

Pressure tests required by this code, which are performed utilizing dial gauges, shall be limited to a gauge having a maximum gauge rating not exceeding twice the applied test pressure.
(Ord. No. 2011.33, 9-22-11)

Sec. 403 MINIMUM PLUMBING FACILITIES.

Section 403.1 is hereby amended as follows:

Section 403.1 Minimum number of fixtures. The minimum number of plumbing fixtures shall be determined by the *International Building Code.*
(Ord. No. 2011.33, 9-22-11)

Sec. 504 SAFETY DEVICES.

Section 504.6 is hereby amended as follows:

Section 504.6 Requirements for discharge piping. The discharge piping serving a pressure relief valve, temperature relief valve or combination thereof shall:

1. Not be directly connected to the drainage system.
2. Discharge in a downward direction.
3. Not be smaller than the diameter of the outlet of the valve served and shall discharge full size to the air gap.
4. Serve a single relief device and shall not connect to piping serving any other relief device or equipment.

5. Discharge through an air gap to the floor, to the pan serving the water heater or storage tank, to a waste receptor or to the outdoors.
6. Discharge in a manner that does not cause personal injury or structural damage.
7. Discharge to a termination point that is readily observable by the building occupants.
8. Not be trapped.
9. Be installed to flow by gravity.
10. Terminate not less than 6 inches (152 mm) and not more than 12 inches (610 mm) above finished grade, the floor or waste receptor.
11. Not have a threaded connection at the end of the piping.
12. Not have valves or tee fittings.
13. Be constructed of those materials listed in Section P2904.5 or materials tested, rated and approved for such use in accordance with ASME A112.4.1.

Section 504.7.1 is hereby amended as follows:

Section 504.7.1 Pan size and drain. The pan shall not be less than 1.5 inches (38 mm) deep and shall be of sufficient size and shape to receive all dripping or condensate from the tank or water heater. The pan shall be drained by an indirect waste pipe having a minimum diameter of ¾ inch (19 mm) installed with a uniform alignment at a uniform slope in the direction of discharge of not less than one-eighth unit vertical in 12 units' horizontal (1-percent slope). Piping for safety pan drains shall be of those materials listed in Table 605.4.
(Ord. No. 2011.33, 9-22-11)

Sec. 604 DESIGN OF BUILDING WATER DISTRIBUTION SYSTEM

Section 604.1 is hereby amended as follows:

Section 604.1 General. The design of the water distribution system shall be determined according to the methods in Appendix E or when approved by the code official, to design methods conforming to acceptable engineering practice.
(Ord. No. 2011.33, 9-22-11)

Sec 701 GENERAL.

Section 701.2 is hereby amended as follows:

Section 701.2 Sewer required. Every building in which plumbing fixtures are installed and all premises having drainage piping shall be connected to a public sewer, where available, or an approved private disposal system in accordance with the Maricopa County Health Department Environmental Service Division. The public sewer may be considered as not being available only when so determined by the Maricopa County Health Department Environmental Service Division.
(Ord. No. 2011.33, 9-22-11)

Sec. 803 SPECIAL WASTES.

Section 803.2 is hereby amended as follows:

Section 803.2 Neutralizing device required for corrosive wastes. Corrosive liquids, spent acids or other harmful chemicals that destroy or injure a drain, sewer, soil or waste pipe or create noxious or toxic fumes or interfere with sewage treatment processes shall not be discharged into the plumbing system without being thoroughly diluted, neutralized or treated by passing through an approved dilution or neutralizing device. Such devices shall be automatically provided with sufficient supply of diluting water or neutralizing medium so as to make the contents non-injurious before discharge into the drainage system. The nature of the corrosive or harmful waste and the method of its treatment or dilution shall be approved prior to installation. Detailed plans and specifications of the pretreatment facilities may be required by the Water Utilities Manager or designate.
(Ord. No. 2011.33, 9-22-11)

Sec. 904 VENT TERMINALS.

Section 904.1 is hereby amended as follows:

Section 904.1 Roof extension. All open vent pipes that extend through a roof shall be terminated at least 6 inches (152 mm) above the roof, except that where a roof is to be used for any purpose other than weather protection, the vent extensions shall be run at least 7 feet (2134 mm) above the roof.
(Ord. No. 2011.33, 9-22-11)

Sec. 1003 INTERCEPTORS AND SEPARATORS.

Section 1003.1 is hereby amended as follows:

Section 1003.1 Where required. Interceptors and separators shall be provided, when required by the Water Utilities Manager, to prevent the discharge of oil, grease, sand and other substances harmful or hazardous to the building drainage system, the public sewer or sewage treatment plant or processes.

Section 1003.2 is hereby amended as follows:

Section 1003.2 Approval. The size, type and location of each interceptor and of each separator shall be approved by the Water Utilities Manager and shall be designed and installed in accordance with the manufacturer’s instructions and the requirements of this section based on the anticipated conditions of use. Wastes that do not require treatment or separation shall not be discharged into any interceptor or separator.

Section 1003.3.4 is hereby amended as follows:

Section 1003.3.4 Grease interceptors and automatic grease removal devices. Grease interceptors and automatic grease removal devices shall be sized by the Water Utilities Manager. Grease interceptors and automatic grease removal devices shall be approved by the Water Utilities Manager. Grease interceptors and automatic grease removal devices shall be installed in accordance with the manufacturer’s instructions.

(Ord. No. 2011.33, 9-22-11)

Sec. 1106 SIZE OF CONDUCTORS, LEADERS, SCUPPERS AND STORM DRAINS.

Section 1106.1 is hereby amended as follows:

Section 1106.1 General. The size of vertical conductors and leaders, building storm drains, building storm sewers, and any horizontal branches of such drains or sewers shall be based on an hourly rainfall rate of 3" per hour.

Section 1106.3 is hereby amended as follows:

Section 1106.3 Building storm drains, sewers and scuppers. The size of the building storm drain, building storm sewer and their horizontal branches having a slope of one-half unit or less vertical in 12 units horizontal (4-percent slope) shall be based on the maximum projected roof area in accordance with Table 1106.3. The minimum slope of horizontal branches shall be one-eighth unit vertical in 12-units horizontal (1-percent slope) unless otherwise approved.

Scuppers shall have a minimum vertical dimension of 6 inches (152 mm) and a minimum width of 1/2 inch (12.7 mm) per 100 square feet (9.29 m^2) of tributary area, but not less than 6 inches (152 mm).

Where downspouts are used, an overflow opening equal in size and shape to the roof scupper shall be provided in the downspout, with the bottom of the opening located between 0 and 2 inches (51 mm) above the bottom of the roof scupper.
(Ord. No. 2011.33, 9-22-11)

Sec. 1107 SECONDARY (EMERGENCY) ROOF DRAINS.

Section 1107.2 is hereby amended as follows:

Section 1107.2 Separate systems required. Secondary roof drain systems shall have the end point of discharge separate from the primary system. Discharge shall be above grade, in a location which would normally be observed by the building occupants or maintenance personnel.

Exception: Secondary drains may be connected to the primary drain system at a point not less than 10' (3048 mm) below the secondary drain inlet height when the primary system is designed for a 6" per hour rainfall.

Section 1107.3 is hereby amended as follows:

Section 1107.3 Sizing of secondary drains. Secondary (emergency) roof drainage systems shall be sized in accordance with Section 1106 based on the rainfall rate for which the primary system is sized in Tables 1106.2(1), 1106.2(2), 1106.3 and 1106.6. Secondary roof drains shall be installed with their inlet flow line located 2 inches (51 mm) above the low point of the roof. In lieu of secondary roof drains, overflow scuppers having three times the size of the roof drains may be installed in the adjacent parapet walls. Secondary scuppers shall be sized to prevent the depth of ponding water from exceeding that for which the roof was designed as determined by Section 1101.7, and the requirements of the International Building Code, Sections 1611.1 and 1611.2. Scuppers shall not have an opening dimension of less than 6 inches (102 mm). The flow through the primary system shall not be considered when sizing the secondary drainage system.
(Ord. No. 2011.33, 9-22-11)

ARTICLE VII. INTERNATIONAL FUEL GAS CODE

Sec. 8-700. Adopted; where filed; amendments.

(a) That certain document known as the "International Fuel Gas Code, 2009 Edition," which has been published as a code in book form by the International Code Council, chapters two through seven and appendix chapters A, B and C inclusive, three (3) copies with amendments of which are on file in the office of the City Clerk.
(Ord. No. 2011.33, 9-22-11)

Charter reference—Adoption by reference, § 2.14.
State law reference—Adoption by reference, A.R.S. § 9-801 et seq.

Sec. 303 APPLIANCE LOCATION.

Section 303.3 is hereby amended as follows:

Section 303.3 Prohibited locations. Appliances shall not be located in sleeping rooms, bathrooms, toilet rooms, storage closets or surgical room, or in a space that opens only into such rooms or spaces, or any room operating under negative pressure unless the appliances are listed for that use except where the installation complies with one of the following:

1. The appliance is a direct-vent appliance installed in accordance with the conditions of the listing and the manufacturer's instructions.
2. Vented room heaters, wall furnaces, vented decorative appliances, vented gas fireplaces, vented gas fireplace heaters and decorative appliances for installation in vented solid fuel-burning fireplaces are installed in rooms that meet the required volume criteria of Section 304.5.
3. A single wall-mounted unvented room heater is installed in a bathroom and such unvented room heater is equipped as specified in Section 621.6 and has an input rating not greater than 6,000 Btu/h (1.76 kW). The bathroom shall meet the required volume criteria of Section 304.5.
4. A single wall-mounted unvented room heater is installed in a bedroom and such unvented room heater is equipped as specified in Section 621.6 and has an input rating not greater than 10,000 Btu/h (2.93 kW). The bedroom shall meet the required volume criteria of Section 304.5.
5. The appliance is installed in a room or space that opens only into a bedroom or bathroom, and such room or space is used for no other purpose and is provided with a solid weather-stripped door equipped with an approved self-closing device. All combustion air shall be taken directly from the outdoors in accordance with Section 304.6.

Liquefied Petroleum (LPG) appliances shall not be installed in an attic, or other location that would cause ponding or retention of gas.

Section 303.7 is hereby amended as follows:

Section 303.7 Pit locations. Appliances installed in pits or excavations shall not come in contact with the surrounding soil. The sides of the pit or excavation shall be held back a minimum of 12 inches (305 mm) from the appliance. Where the depth exceeds 12 inches (305 mm) below adjoining grade, the walls of the pit or excavation shall be lined with concrete or masonry. Such concrete or masonry shall extend a minimum of 4 inches (102 mm) above to adjacent grade and shall have sufficient lateral load-bearing capacity to resist collapse. The appliance shall be protected from flooding in an approved manner.

Liquefied petroleum (LPG) appliances shall not be installed in a pit, or other location that would cause a ponding or retention of gas.
(Ord. No. 2011.33, 9-22-11)

Sec. 304 COMBUSTION, VENTILATION AND DILUTION AIR.

Section 304.1 is hereby amended as follows:

Section 304.1 General. Air for combustion, ventilation and dilution of flue gases for appliances installed in buildings shall be provided by application of one of the methods prescribed in Sections 304.5 through 304.9. Where the requirements of Section 304.5 are not met, outdoor air shall be introduced in accordance with one of the methods prescribed in Sections 304.6 through 304.9. For LPG appliances, any duct serving the lower opening shall be at the floor level and slope to the outdoors without traps or pockets. Direct-vent appliances, gas appliances of other than Category I shall be provided with combustion ventilation and dilution air in accordance with the appliance manufacturer's instructions.

Section 304.1.1 is hereby amended as follows:

Section 304.1.1 Prohibited sources. Combustion air ducts and openings shall not connect appliance enclosures with space in which the operation of a fan may adversely affect the flow of combustion air. Combustion air shall not be obtained from an area in which flammable vapors present a hazard. Fuel-fired appliances shall not obtain combustion air from any of the following rooms or spaces:

1. Sleeping rooms.
2. Bathrooms.
3. Toilet rooms.

   Exception: The following appliances may be located in sleeping rooms, bathrooms and toilet rooms:

   1. Appliances installed in an enclosure in which all combustion air is taken from the outdoors and the enclosure is equipped with a solid weather-stripped door and self-closing device.
   2. Direct-vent appliances that obtain all combustion air directly from the outdoors.

Section 304.11 is hereby amended as follows:

Section 304.11 Combustion air ducts. Combustion air ducts shall comply with all of the following:

1. Ducts shall be constructed of galvanized steel complying with Chapter 6 of the International Mechanical Code or of a material having equivalent corrosion resistance, strength and rigidity.

   Exception: Within dwellings units, unobstructed stud and joist spaces shall not be prohibited from conveying combustion air, provided that not more than one required fireblock is removed.
2. Ducts shall terminate in an unobstructed space allowing free movement of combustion air to the appliances.
3. Ducts shall serve a single enclosure.
4. A single duct shall not serve both upper and lower combustion air openings where both such openings are used. The separation between ducts serving upper and lower combustion air openings shall be maintained to the source of combustion air.
5. Ducts shall not be screened where terminating in an attic space.

6. Horizontal upper combustion air ducts shall not slope downward toward the source of combustion air.
7. The remaining space surrounding a chimney liner, gas vent, special gas vent or plastic piping installed within a masonry, metal or factory-built chimney shall not be used to supply combustion air.

   Exception: Direct-vent gas-fired appliances designed for installation in a solid fuel-burning fireplace where installed in accordance with the manufacturer's instructions.
8. Combustion air intake openings located on the exterior of a building shall have the lowest side of such openings located not less than 12 inches (305 mm) vertically from the adjoining finished ground level.
9. For LPG appliances, any duct serving the lower opening shall be at the floor level and slope to the outdoors without traps or pockets.

(Ord. No. 2011.33, 9-22-11)

Sec. 305 INSTALLATION

Section 305.3 is hereby amended as follows:

Section 305.3 Elevation of ignition source. Equipment and appliances having an ignition source shall be elevated such that the source of ignition is not less than 18 inches (457 mm) above the floor in hazardous locations and public garages, private garages, repair garages, motor fuel-dispensing facilities and parking garages. For the purpose of this section, rooms or spaces that are not part of the living space of a dwelling unit and that communicate directly with a private garage through openings shall be considered to be part of the private garage.

Exceptions:

1. Elevation of the ignition source is not required for appliances that are listed as flammable vapor resistant and for installation without elevation.
2. Direct-vent appliances that obtain all combustion air directly from the outdoors.
3. Clothes dryers installed in private garages.

Section 305.7 is hereby amended as follows:

Section 305.7 Clearances from grade. Equipment and appliances installed at grade level shall be supported on a level concrete slab or other approved material extending not less than 3 inches (76 mm) above finished grade or shall be suspended a minimum of 6 inches (152 mm) above finished grade. Such supports shall be installed in accordance with the manufacturer's installation instructions.
(Ord. No. 2011.33, 9-22-11)

Sec. 404. PIPING SYSTEM INSTALLATION.

Section 404.1 is hereby amended as follows:

Section 404.4.1 Underground piping. No gas piping shall be permitted under asphalt, concrete or other paved surface that adjoins any building or structure unless installed in a gas-tight conduit or other approved method of venting is provided.

The conduit shall be of wrought iron, plastic pipe, steel pipe or other approved conduit material. The conduit shall be protected from corrosion in accordance with Section 404.9. The interior diameter of the conduit shall be not less than one-half inch larger than the outside diameter of the gas pipe within. The

conduit shall extend to a point not less than 12 inches (305 mm) beyond or 4 inches (102 mm) above the paved surface. The ends shall not be sealed.

Section 404.10 is hereby amended as follows:

Section 404.10 Minimum burial depth. Underground piping systems shall be installed a minimum depth of 12 inches (305 mm) below grade for metal, and 18 inches (457 mm) below grade for plastic piping.

Section 404.10.1 is hereby deleted.

Section 404.15.1 is hereby amended as follows:

Section 404.15.1 Limitations. Plastic pipe shall be installed outdoors underground only. Plastic pipe shall not be used within or under any building or slab or be operated at pressures greater than 100 psig (689 kPa) for natural gas or 30 psig (207 kPa) for LP-gas.

Exceptions:

1. Plastic pipe shall be permitted to terminate above ground outside of buildings where installed in pre-manufactured anodeless risers or service head adapter risers that are installed in accordance with the manufacturer's installation instructions.
2. Plastic pipe shall be permitted to terminate with a wall head adapter within buildings where the plastic pipe is inserted in a piping material for fuel gas use in buildings.
3. Plastic pipe shall be permitted under outdoor patio, walkway and driveway slabs provided that the burial depth complies with Section 404.10 and Section 404.4.1.

(Ord. No. 2011.33, 9-22-11)

Sec. 406 INSPECTION, TESTING AND PURGING.

Section 406.4 is hereby amended as follows:

Section 406.4 Test pressure measurement. Test pressure shall be measured with a manometer or with a pressure-measuring device designed and calibrated to read, record, or indicate a pressure loss caused by leakage during the pressure test period. The source of pressure shall be isolated before the pressure tests are made.

406.4.1 Test pressure. The test pressure to be used shall be no less than ten (10) pounds per square inch (69 kPa) gauge pressure, or where approved by the Building Official, the piping and valves may be tested at a pressure of at least six (6) inches (152.4 mm) of mercury, measured with a manometer or slope gauge. For welded piping, and for piping carrying gas at pressures in excess of fourteen (14) inches (0.4 m) water column pressure, the test pressure shall be no less than sixty (60) pounds per square inch (413 kPa). Where the test pressure exceeds 125 psig (862 kPa gauge), the test pressure shall not exceed a value that produces a hoop stress in the piping greater than 50 percent of the specified minimum yield strength of the pipe.

406.4.2 Test duration. Test duration shall be not less than fifteen (15) minutes or for welded pipe and piping carrying gas at pressures in excess of fourteen (14) inches (0.4 m) water column pressure, the

test duration shall be not less than thirty (30) minutes. The duration of the test shall not be required to exceed 24 hours.

406.4.3 Test Gauges. Tests required by this Code which are performed utilizing dial gauges shall be limited to gauges having the following pressure increments or graduations:

406.4.3.1. Required pressure tests of ten (10) pounds (69 kPa) or less shall be performed with gauges having increments of one-tenth (1/10) pound (0.69 kPa) or less.

406.4.3.2. Required pressure tests exceeding ten (10) pounds (69 kPa) but less than one hundred (100) pounds (690 kPa) shall be performed with gauges having increments of one pound (7 kPa) or less.

406.4.3.3. Required pressure tests exceeding one hundred (100) pounds (690 kPa) shall be performed with gauges having increments 2 psi (14 kPa) or less.

406.4.3.4. Pressure tests required by this code, which are performed utilizing dial gauges, shall be limited to a gauge having a maximum gauge rating not exceeding twice the applied test pressure.
(Ord. No. 2011.33, 9-22-11)

ARTICLE VIII. NATIONAL ELECTRICAL CODE

Sec. 8-800. Adopted; where filed; amendments.

(a) That certain document known as the "National Electrical Code, 2008 Edition," which has been published as a code in book form by the National Fire Protection Association entitled "National Electrical Code, N.F.P.A. No. 70 - 2008 Edition," Article 90 and chapters one through eight, three (3) copies with amendments of which are on file in the office of the city clerk, and this same code is hereby referred to, adopted and made a part hereof, as if fully set out in this article.

(b) The provisions of this article, other than subsections (a) and (b) of this section, are amendments to the National Electrical Code as now or hereafter adopted in subsection (a). All sections in this article, other than subsections (a) and (b) of this section, shall be considered to be both a part of this code and a part of the National Electrical Code.
(Ord. No. 2008.72, 12-11-08)

Charter reference—Adoption by reference, § 2.14.
State law reference—Adoption by reference, A.R.S. § 9-801 et seq.

Art. 110. Requirements for electrical installations.

Article 110.7 is hereby amended as follows:

110.7. Wiring integrity. Completed wiring installations shall be free from short circuits, ground faults, or any connections to ground other than those required or permitted elsewhere in this code.

All equipment rated at one thousand (1,000) amperes or more shall be tested in conformance with UL Standard 869 or 891 for insulation breakdown prior to its being energized. This test shall be performed by an independent testing facility or agency approved by the authority having jurisdiction.
(Ord. No. 2008.72, 12-11-08)

Art. 210. Branch circuits.

Article 210.5, *Identification for branch circuits,* is hereby amended by adding section (D) as follows:

210.5(D). Color code. Where fifteen (15), twenty (20), or thirty (30) ampere branch circuits requiring a neutral, are installed in raceways, the conductors of branch circuits connected to the same system shall conform to the following color code:

Volts	Phase	System	Phase A	Phase B	Phase C	Neutral
120/208	3	Wye	Black	Red	Blue	White
277/480	3	Wye	Brown	Orange	Yellow	Gray
120/240	3	Delta	Black	Orange	Blue or Red	White

EXCEPTIONS:

1. The above color coding is not required in residential occupancies.

2. Industrial occupancies holding their own maintenance license may use their own color coding system.

3. Conductors of listed cable assemblies shall be permitted to be permanently re-identified at the time of installation by distinctive markings at each outlet or termination where the conductor is visible and accessible; such as, six (6) inch (152 mm) taping or other effective means.

4. Additions to an existing electrical system, where an acceptable color coding system exists, the existing color coding system shall be continued.

(Ord. No. 2008.72, 12-11-08)

Art. 220. Branch-circuit, feeder, and service calculations.

Article 220.82, *Dwelling unit*, is hereby amended by adding subsection (B)(5) as follows:

*220.82(B)(*5). For purposes of calculations and installation requirements, the following loads and branch circuit requirements may be used where the actual nameplate rating is not available.

	LOAD	**CONDUCTOR AMPACITY**	**SINGLE PHASE NOMINAL VOLTAGE**
Electric Clothes Dryer	5000 VA	30 Ampere	(120/240V)
Water Heater	4500 VA	30 Ampere	(240V)
Dishwasher	1500 VA	20 Ampere	(120V)
Garbage Disposal	720 VA	20 Ampere	(120V)
Evaporative Cooler	1200 VA	20 Ampere	(120V)
Compactor	1500 VA	20 Ampere	(120V)
Wall Mounted Oven Or Counter Mounted Cooking Units	6000 VA	30 Ampere	(120/240V)
Range	12000 VA	50 Ampere	(120/240V)
Gas Fired Clothes Dryer	1500 VA	20 Ampere	(120V)
Clothes Washer	1500 VA	20 Ampere	(120V)
Microwave Ovens (Fixed)	1200 VA	20 Ampere	(120V)

Note: The above calculations are without appropriate NEC demands, which may be taken where permitted in the NEC.

If appliances are installed having higher nameplate ratings than the minimum loads specified above, the conductors shall be increased to the proper size. Where limited storage capacity water heaters are specified, the nameplate rating of the unit(s) shall be used.
(Ord. No. 2008.72, 12-11-08)

Art. 225. Outside branch circuits and feeders.

Article 225.32, *Location,* is hereby amended by adding Exception 5 as follows:

EXCEPTION NO. 5: For free-standing canopies, carports, towers, and similar structures; a branch circuit disconnecting means shall be permitted to be located elsewhere on the premises. A grounding electrode conductor sized per 250.66 shall be run with the circuit conductors.
(Ord. No. 2008.72, 12-11-08)

Art. 230. Services.

Article 230.28 is hereby amended as follows:

230.28. Service masts as supports. Where a service mast is used for the support of service-drop conductors, it shall be of adequate strength. The service mast shall be rigid steel conduit or intermediate metal conduit, not less than one and one-half (1-1/2) inch trade size, and shall not contain any coupling(s) which would be subject to strain by the service-drop. Where the service-drop point of attachment exceeds eighteen (18) inches (457 mm) above the roof or thirty (30) inches (762 mm) above the final raceway support, the service mast shall be supported by braces or guys to withstand safely the strain imposed by the service-drop. Where raceway-type service masts are used, all raeway fittings shall be identified for use with service masts. Only power service-drop conductors shall be permitted to be attached to a service mast.

(FPN): Lag screws are not acceptable. See local electrical utility specifications.

Article 230.43 is hereby amended as follows:

230.43. Wiring methods for 600 volts, nominal, or less. Service-entrance conductors shall be installed in accordance with the applicable requirements of this code covering the type of wiring method used and shall be limited to the following methods:

(1) Rigid metal conduit

(2) Intermediate metal conduit

(3) Wireways

(4) Busways

(5) Auxiliary gutters

(6) Rigid non-metalic conduit may be used underground

(7) Schedule 80 rigid non-metalic conduit may extend above ground to the service equipment.

(FPN): Refer to the electric utility requirements for additional information on installing service-entrance conductors on or within buildings and underground serving the premises.

Article 230.70(A)(1) is hereby amended as follows:

230.70(A)(1). Readily accessible location. The service disconnecting means shall be installed at a readily accessible location either outside of a building or structure, or inside nearest the point of entrance of the service conductors. The service disconnecting means shall be installed adjacent to and accessible from the same working area as the utility meter.

All service disconnecting means located inside a building shall be enclosed within a room or space separated from the rest of the building by not less than a one-hour fire-resistive fire barrier.

EXCEPTIONS:

1. Open parking structures.

2. The ceiling of this service entrance room may be constructed as required for a one-hour wall assembly with protected openings. For the purpose of this section only, a one-hour rated wall assembly may be used in a horizontal position.

(Ord. No. 2008.72, 12-11-08)

Art. 250. Grounding and bonding.

Article 250.118 is hereby amended as follows:

250.118. Types of equipment grounding conductors. The equipment grounding conductor run with or enclosing the circuit conductors shall be one or more or a combination of the following:

(1) A copper or other corrosion-resistant conductor. This conductor shall be solid or stranded; insulated, covered, or bare; and in the form of a wire or a busbar of any shape.

(2) Rigid metal conduit with an individual equipment grounding conductor.

(3) Intermediate metal conduit with an individual equipment grounding conductor.

(4) Electrical metallic tubing with an individual equipment grounding conductor.

(5) Flexible metal conduit with an individual equipment grounding conductor.

(6) Type AC cable with an individual equipment grounding conductor.

(7) The copper sheath of mineral-insulated, metal-sheathed cable.

(8) Type MC cable with an individual equipment grounding conductor.

(9) Cable trays as permitted in 392.7.

(10) Cablebus framework as permitted in 370.3.

(11) Other electrically continuous metal raceways listed for grounding.
(Ord. No. 2008.72, 12-11-08)

Art. 310. Conductors for general wiring.

Article 310.15(B)(6) is hereby amended as follows:

310.15(B)(6). 120/240-volt, 3-wire, single-phase dwelling services and feeders. For individual dwelling units of one-family, two-family, and multi-family dwellings, conductors, as listed in Table 310.15(B)(6), shall be permitted as 120/240-volt, 3-wire, single-phase service-entrance conductors, service lateral conductors, and feeder conductors that serve as the main power feeder to a dwelling unit and are installed in raceway or cable with or without an equipment grounding conductor. For application of this section, the main power feeder shall be in the feeder between the main disconnect and the panelboard that supplies, either by branch circuits or by feeders, or both, all loads that are part or associated with the dwelling unit. The feeder conductors to a dwelling unit shall not be required to have an allowable ampacity rating greater than their service-entrance conductors. The grounded conductor shall be permitted to be smaller than the ungrounded conductors, provided the requirements of 215.2, 220.61, and 230.42 are met.

Conductor Types and Sizes RHH RHW RHW-2 THHN THHW THW THW-2 THWN THWN-2 XHHW XHHW-2 SE USE USE-2		
Copper	**Aluminum or Copper-Clad Aluminum**	**Service or Feeder Rating in Amps > 30°C (86°F)**
AWG	AWG	
4	2	—
3	1	—
2	1/0	100
1	2/0	125
1/0	3/0	150
2/0	4/0	175
3/0	250 kcmil	200
4/0	300 kcmil	225
250 kcmil	350 kcmil	250
350 kcmil	500 kcmil	300
400 kcmil	600 kcmil	350
500 kcmil	750 kcmil	400

(Ord. No. 2008.72, 12-11-08)

Art. 334. Nonmetallic-sheathed cable: Types NM, NMC, and NMS.

Article 334.10 is hereby amended as follows:

334.10. Uses permitted. Type NM, NMC, and Type NMS cables shall be permitted to be used in the following:

(1) One- and two-family dwellings and their accessory structures.

(2) Within the dwelling units of multifamily dwellings permitted to be Types III, IV, and V construction except as prohibited in 334.12.

(3) Cable trays in structures permitted to be Types III, IV, and V where cables are identified for the use.

(Ord. No. 2008.72, 12-11-08)

Art. 348. Flexible metal conduit: Type FMC.

Article 348.60 is hereby amended as follows:

348.60. Grounding. Flexible metal conduit shall provide an adequate path for equipment grounding as required by 250.118.
(Ord. No. 2008.72, 12-11-08)

Art. 350. Liquidtight flexible metal conduit: Type LFMC.

Article 350.60 is hereby amended as follows:

350.60. Grounding. Liquidtight flexible metal conduit shall provide an adequate path for equipment grounding as required by 250.118.
(Ord. No. 2008.72, 12-11-08)

Art. 501. Class I locations.

Article 501.30(B) is hereby amended as follows:

501.30(B). Types of equipment grounding conductors. Where flexible metal conduit or liquidtight flexible metal conduit is used as permitted in 501.10(B)(2) and is to be relied upon to complete a sole equipment grounding path, it shall be installed with internal or external bonding jumpers in parallel with each conduit and complying with 250.102.
(Ord. No. 2008.72, 12-11-08)

Art. 502. Class II locations.

Article 502.30(B) is hereby amended as follows:

502.30(B). Types of equipment grounding conductors. Where flexible conduit is used as permitted in 502.10, it shall be installed with internal or external bonding jumpers in parallel with each conduit and complying with 250.102.
(Ord. No. 2008.72, 12-11-08)

Art. 503. Class III locations.

Article 503.30(B) is hereby amended as follows:

503.30(B). Types of equipment grounding conductors. Where flexible conduit is used as permitted in 503.10, it shall be installed with internal or external bonding jumpers in parallel with each conduit and complying with 250.102.
(Ord. No. 2008.72, 12-11-08)

Art. 680. Swimming pools, fountains, and similar installations.

Article 680 is hereby amended by adding Article 680.13 as follows:

680.13. Mechanical and electrical equipment location. Mechanical and electrical equipment not addressed in other sections in Article 680, shall not be permitted within the area extending six (6) feet (1.83 m) horizontally from the inside wall of the pool.

EXCEPTION: Listed swimming pool covers where the electrical equipment is part of the total assembly.

(FPN): In determining the above dimension the distance to be measured is the shortest path to the equipment without piercing a floor, wall, ceiling, doorway with hinged or sliding door, window opening, or other similar effective permanent barrier.
(Ord. No. 2008.72, 12-11-08)

Art. 725. Class 1, Class 2, and Class 3 remote-control, signaling, and power-limited circuits.

Article 725 is hereby amended by adding Article 725.32 as follows:

725.32. Bell and signal transformers. In residential occupancies, bell or signal transformers shall not be installed in attics, closets, or in any inaccessible concealed place.
(Ord. No. 2008.72, 12-11-08)

Secs. 8-801—8-899. Reserved.

ARTICLE IX. INTERNATIONAL ENERGY CONSERVATION CODE

Sec. 8-900. Adopted; where filed; amendments.

(a) That certain document known as the "International Energy Conservation Code, 2009 Edition," which has been published as a code in book form by the International Code Council, chapters two through six, three (3) copies with amendments of which are on file in the office of the City Clerk.
(Ord. No. 2011.33, 9-22-11)

Charter reference—Adoption by reference, § 2.14.
State law reference—Adoption by reference, A.R.S. § 9-801 et seq.

Sec. 401 GENERAL.

Section 401.1 is hereby amended as follows:

401.1 Scope. This chapter applies to residential buildings.

Exception: Evaporative coolers are not covered by this code.

Section 401.2 is hereby amended as follows:

Section 401.2 Compliance. Projects shall comply with Sections 401, 402.4, 402.5, and 403.1, 403.2.2, 403.2.3, and 403.3 through 403.9 (referred to as the mandatory provisions) and either:

1. Sections 402.1 through 402.3, 403.2.1 and 404.1 (prescriptive); or
2. Section 405 (performance).

As an alternative, additions, alterations, remodels, and repairs may comply with the department's standard energy conservation details.
(Ord. No. 2011.33, 9-22-11)

Sec. 402 BUILDING THERMAL ENVELOPE

Section 402.2.4.1 is hereby amended as follows:

Section 402.2.4.1 Insulation for Masonry Mass walls. Exterior or Fire Walls shall not use absorbent (open cell and water-reactive, supporting mold growth) organic insulation at the exterior, integral between wythes, or integral within otherwise unfilled grout spaces such as within cores or cells of Concrete Masonry, Clay, or Shale Masonry Units. To maintain the required R-Values and U-Factors, closed cell insulation (non-absorbent) such as, though not limited to, closed-cell polyurethane foamed-in-place as well as closed cell expanded, extruded, or sprayed polystyrenes, gas-impermeable faced polyisocyanurates, adsorbent, non-water reactive, non-mold supporting insulation, and inorganic types are acceptable.

Section 402.2.4.2 is hereby amended as follows:

Section 402.2.4.2 Drainage of Masonry. If an exterior post-applied film-forming coating and/or sealant (paints, block-fillers, parges, breathable film-formers, etc.) is used on exposed masonry then flashings and weeps shall drain to the exterior as designed.

Section 402.2.4.3 is hereby amended as follows:

Section 402.2.4.3 Moisture Resistance of Masonry. All exterior exposed-face Concrete Masonry Units (CMU) which have Integral Water Repellent (IWR) shall comply with National Concrete Masonry Association (NCMA) standards and tests (NCMA CMU WR1, WR2, or WR3) for moisture resistance. Exposed mortar shall have Integral Water Repellent (IWR).

If post-applied coatings and / or sealants are used, they shall give evidence of moisture resistance so as to maintain thermal efficiency of the masonry wall assembly.

When moisture resistance is demonstrated the related tests or demonstrations need to be performed before interior finishes are in place.
(Ord. No. 2011.33, 9-22-11)

Sec. 403 SYSTEMS (Mandatory)

Section 403.2.1 is hereby amended as follows:

Section 403.2.1 Insulation. Supply ducts shall be insulated to a minimum of R-8. All other ducts shall be insulated to a minimum of R-6.

Exceptions:

1. Ducts or portions thereof located completely inside the building thermal envelope.
2. Supply and return ducts may be insulated to a minimum of R-6 when one or more of the following conditions are met:
   - Minimum seer rating of space heating/cooling system is 14.
   - Maximum U-factor is 0.64 and maximum SHGC is 0.35 for all fenestration products.
   - Wall insulation minimum R-value is R-19.
   - Residential buildings that meet the requirements of a national, state or local energy efficiency program to exceed the energy efficiency required by this code. Buildings approved in writing by such an energy efficiency program shall be considered in compliance with this code. The requirements identified as "mandatory" in Chapters 4 and 5 of this code, as applicable, shall be met.
   - Residential buildings that meet the requirements of Section 404.

(Ord. No. 2011.33, 9-22-11)

Section 501 GENERAL

Section 501.1 is hereby amended as follows:

Section 501.1 Scope. The requirements contained in this chapter are applicable to commercial buildings, or portions of commercial buildings. These commercial buildings shall

meet either the requirements of ASHRAE/IESNA Standard 90.1, Energy Standard for Buildings Except for Low-Rise Residential Buildings, or the requirements contained in this chapter.

Exceptions:

1. Lighting and their controls, that are required by the City of Tempe, Zoning and Development Code, are not regulated by this code.
2. Evaporative coolers are not covered by this code.

(Ord. No. 2011.33, 9-22-11)

Section 502 BUILDING ENVELOPE REQUIREMENTS

Section 502.2.3.1 is hereby amended as follows:

Section 502.2.3.1 Insulation for Masonry Mass walls. Exterior or Fire Walls shall not use absorbent (open cell and water-reactive, supporting mold growth) organic insulation at the exterior, integral between wythes, or integral within otherwise unfilled grout spaces such as within cores or cells of Concrete Masonry, Clay, or Shale Masonry Units. To maintain the required R-Values and U-Factors, closed cell insulation (non-absorbent) such as, though not limited to, closed-cell polyurethane foamed-in-place as well as closed cell expanded, extruded, or sprayed polystyrenes, gas-impermeable faced polyisocyanurates, adsorbent, non-water reactive, non-mold supporting insulation, and inorganic types are acceptable.

Section 502.2.3.2 is hereby amended as follows:

Section 502.2.3.2 Drainage of Masonry. If an exterior post-applied film-forming coating and/or sealant (paints, block-fillers, parges, breathable film-formers, etc.) is used on exposed masonry then flashings and weeps shall drain to the exterior as designed.

Section 502.2.3.3 is hereby amended as follows:

Section 502.2.3.3. Moisture Resistance of Masonry. All exterior exposed-face Concrete Masonry Units (CMU) which have Integral Water Repellent (IWR) shall comply with National Concrete Masonry Association (NCMA) standards and tests (NCMA CMU WR1, WR2, or WR3) for moisture resistance. Exposed mortar shall have Integral Water Repellent (IWR).

If post-applied coatings and / or sealants are used, they shall give evidence of moisture resistance so as to maintain thermal efficiency of the masonry wall assembly.

When moisture resistance is demonstrated the related tests or demonstrations need to be performed before interior finishes are in place.
(Ord. No. 2011.33, 9-22-11)

Chapter 9

CIVIL DEFENSE AND EMERGENCY SERVICES

ARTICLE I. IN GENERAL

Sec. 9-1. Purposes.

The purposes of this chapter are to:

(1) Reduce vulnerability of people and the community to damage, injury and loss of life and property resulting from natural or manmade catastrophes, riots or hostile military or paramilitary action;

(2) Prepare for prompt and efficient rescue, care and treatment of persons victimized or threatened by disaster;

(3) Provide a setting conducive to the rapid and orderly start of restoration and rehabilitation of persons and property affected by disasters;

(4) Clarify and strengthen the roles of the city council, the mayor, city manager and city agencies in prevention of, preparation for, response to and recovery from disasters;

(5) Authorize and provide for cooperation in disaster prevention, preparedness, response and recovery;

(6) Authorize and provide for coordination of activities relating to disaster prevention, preparedness, response and recovery by agencies and officers of this city, agencies of the private sector, and similar activities in which the federal government, the state and its political subdivisions may participate; and

(7) Provide a disaster management system embodying all aspects of pre-disaster preparedness and post-disaster response.

(Code 1967, § 9-1)

Sec. 9-2. Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

Building treatment means the installation of signal enhancing, repeating or radiating equipment or cable for the purpose of providing emergency response personnel with minimal RF coverage required to communicate with their respective dispatch.

Director means the city manager, his designated alternate or such other person designated by the city council.

Disaster means the occurrence of imminent threat of widespread or severe damage, injury or loss of life or property or extreme peril to the safety of persons or property, resulting from any natural or man-made causes, including but not limited to fire, flood, earthquake, wind, storm, blight, drought, famine, infestation, air contamination, epidemic, explosion, riot or other acts of civil disobedience which endanger life or property or hostile military or paramilitary action.

Emergency means the existence of a disaster within the city limits requiring immediate action by the emergency forces of the city.

Emergency forces means all city governmental and private sector agencies; volunteers, facilities, equipment, trained manpower and other resources required to perform civil preparedness functions.

Emergency services means the organization, administration, trained manpower facilities, equipment, material, supplies, programs, emergency plans, ability to execute emergency plans, and all other measures necessary and incidental thereto relating to disaster prevention, preparedness, response and recovery by all governmental and private sector agencies to protect or save health, life or property.

Fire code official means the fire marshal, his designated alternate or such person designated by the fire medical rescue department chief.

Local emergency means the existence of a disaster within the city limits, and the situation is or is likely to be beyond the capability and resources of the city as determined by the mayor and which requires the combined efforts of other political subdivisions.

Regulations means the orders, rules and emergency procedures deemed essential for civil preparedness.

State of emergency means the duly proclaimed existence of a disaster within the state except a disaster resulting in a state of war emergency which is or is likely to be beyond the capabilities and resources of any single county, city or town and requires the combined efforts of the state and the political subdivision.

State of war emergency means the situation which exists immediately whenever this nation is attacked or upon receipt by this state of a warning from the federal government indicating that such an attack is imminent.
(Code 1967, § 9-2; Ord. No. O2014.09, 2-27-14)

Charter reference—Authority of mayor during emergency, § 1.04.
State law reference—A.R.S. § 26-311.

Sec. 9-3. Emergency services organization.

The city manager is hereby authorized and directed to create an emergency services organization. The city manager shall be the director of emergency services.
(Code 1967, § 9-3)

Sec. 9-4. Director.

(a) The director of emergency services is responsible in nonemergency periods to act on behalf of the mayor and council to develop a readiness for emergency services and for coordinated operations in disaster situations.

During emergencies, the director shall act as the principal advisor or aide to the mayor on emergency operations. His major responsibility is to ensure coordination among emergency forces and with higher and adjacent governments, by ensuring that the EOC functions effectively. He shall assist the mayor in the execution of operations, plans and procedures required by the emergency.
(Code 1967, § 9-4(c)(1),(2))

Sec. 9-5. Disaster plan.

(a) The director of emergency services shall prepare a comprehensive disaster basic plan which shall be adopted and maintained by resolution of the council upon the recommendations of the director. In the preparation of this plan as it pertains to city organization, it is the intent that the services, equipment, facilities and personnel of all existing departments and agencies to be used to the fullest extent.

(b) The disaster plan shall be considered supplementary to this chapter and have the effect of law whenever emergencies, as defined in this chapter, have been proclaimed.
(Code 1967, § 9-4(c)(3),(4))

Sec. 9-6. Penalty.

Any person who violates any provisions of this chapter or who refuses or wilfully neglects to obey any lawful regulation issued as provided in this chapter shall be subject to the penalty provided in section 1-7 of this code.
(Code 1967, § 9-7)

Sec. 9-7. Enforcement of regulations.

The law-enforcing authority of the city shall enforce regulations issued pursuant to this chapter.
(Code 1967, § 9-6)

Secs. 9-8—9-20. Reserved.

ARTICLE II. PUBLIC SAFETY RADIO AMPLIFICATION SYSTEM

Sec. 9-21. Purpose.

The purpose of this article is to provide minimum standards to insure a reasonable degree of reliability for emergency services communications from within certain buildings and structures within the city to and from emergency communications centers. It is the responsibility of the emergency service provider to get the signal to and from the building site.
(Ord. No. 2001.25, 9-13-01)

Sec. 9-22. Applicability.

This article applies to new construction permits issued after October 13, 2001.
(Ord. No. 2001.25, 9-13-01; Ord. No. 2007.54, 8-16-07)

Sec. 9-23. Scope.

The provisions of this article shall apply to:

(1) New buildings greater than fifty thousand (50,000) square feet;

(2) Existing buildings over fifty thousand (50,000) square feet when modifications, alterations or repairs exceed fifty percent (50%) of the value of the existing building(s) and are made within any twelve (12) month period or the usable floor area is expanded or enlarged by more than fifty percent (50%); and

(3) All basements where the occupant load is greater than fifty (50), regardless of the occupancy, or sub-level parking structures over ten thousand (10,000) square feet.

(4) Any structure where it is determined by the fire code official that a radio coverage system is required.
(Ord. No. 2001.25, 9-13-01; Ord. No. O2014.09, 2-27-14)

Sec. 9-24. Radio coverage.

(a) Except as otherwise provided in this article, no person shall erect, construct or modify any building or structure or any part thereof, or cause the same to be done which fails to support adequate radio coverage for firefighters and police officers. Inadequate radio coverage shall be deemed to render such buildings or structures or any parts thereof unsafe and subject to the provisions of Sections 8-108.1 and 8-108.1.2.

(b) The city's telecommunications unit with consideration of the appropriate police, fire and emergency medical department services shall determine the frequency range or ranges that must be supported.

(c) For the purpose of this section, adequate radio coverage shall constitute a successful communications test between the equipment in the building and the communications centers for all appropriate emergency service providers for the building.
(Ord. No. 2001.25, 9-13-01; Ord. No. 2007.54, 8-16-07)

Sec. 9-25. Inbound into the building.

(a) A minimum average in-building field strength of one micro-volts (-107dbm) for analog and five (5) micro-volts (-93dbm) for digital systems throughout ninety-five percent (95%) of the area of each floor of the building when transmitted from the city's police dispatch center and the appropriate emergency service dispatch centers which are providing fire and emergency medical protection services to the building.

(b) If the field strength outside the building where the receive antenna system for the in-building system is located is less than -107dbm for analog, or -93dbm for digital systems, then the minimum required in-building field strength shall equal the field strength being delivered to the receive antenna of the building.

(c) As used in this article, ninety-five percent (95%) coverage or reliability means the radio will transmit ninety-five percent (95%) of the time at the field strength and levels as defined in this article.
(Ord. No. 2001.25, 9-13-01; Ord. No. O2014.09, 2-27-14)

Sec. 9-26. Outbound from the building.

A minimum average signal strength of one micro-volts (-107dbm) for analog and five (5) micro-volts (-93dbm) for digital systems as received by the city's police dispatch center and the appropriate emergency service dispatch centers which are providing fire and emergency medical protection services to the building.
(Ord. No. 2001.25, 9-13-01)

Sec. 9-27. FCC authorization.

If amplification is used in the system, all FCC authorizations must be obtained prior to use of the system. A copy of these authorizations shall be provided to the city's telecommunications unit supervisor.
(Ord. No. 2001.25, 9-13-01)

Sec. 9-28. Enhanced amplifications systems.

(a) Where buildings and structures are required to provide amenities to achieve adequate signal strength, they shall be equipped with any of the following to achieve the required adequate radio coverage; radiating cable systems(s), internal multiple antenna system(s) with a frequency range as established in § 9-24(b) with amplification system(s) as needed, voting receiver system(s) as needed, or any other city approved system(s).

(b) If any part of the installed system or systems contains an electrically powered component, the system shall be capable of operation of an independent battery or generator system for a period of at least twenty-four (24) hours without external power input or maintenance. The battery system shall automatically charge in the presence of external power.

(c) Amplification equipment must have adequate environmental controls to meet the heating, ventilation, cooling and humidity requirements of the equipment that will be utilized to meet the requirements of this code. The area where the amplification equipment is located also

must be free of hazardous materials such as fuels, chemicals, asbestos, etc. The location of the amplification equipment must be in an area that has twenty-four (24) hour, seven (7) day a week access for the city's telecommunications personnel. All communications equipment including amplification systems, cable and antenna systems shall be grounded with a single point ground system of five (5) ohms or less. The ground system must include an internal tie point within three (3) feet of the amplification equipment. System transient suppression for the telephone circuits, ac power, radio frequency (RF) cabling and grounding protection are required as needed.

(d) The following information shall be provided to the fire code official, with a copy to the city telecommunications division by the builder:

(1) A blueprint showing the location of the amplification equipment and associated antenna systems which includes a view showing building access to the equipment; and

(2) Schematic drawings of the electrical, backup power, antenna system and any other associated equipment relative to the amplification equipment including panel locations and labeling.

(Ord. No. 2001.25, 9-13-01; Ord. No. 2007.54, 8-16-07; Ord. No. O2014.09, 2-27-14)

Sec. 9-29. Initial testing procedures – method to conduct tests.

(a) Testing shall be performed by a city-approved RF engineer. The city will provide a list of qualified RF engineers. It is the responsibility of the building owner to contact the RF engineer and make arrangements for testing.

(b) Tests shall be made using frequencies close to the frequencies used by the city's fire medical rescue department appropriate emergency services. If testing is performed on the actual frequencies, then this testing must be coordinated within the city's telecommunications unit. All testing must be performed on frequencies authorized by the FCC. A valid FCC license will be required if testing is performed on frequencies different from the city police, fire or emergency medical frequencies.

(c) Measurements shall be made using the following guidelines:

(1) With a service monitor using a unity gain antenna on a small ground plane;

(2) Measurements shall be made with the antenna held in a vertical position at three (3) to four (4) feet above the floor;

(3) Signal strength, both inbound and outbound as defined above, shall be measured on each and every floor above and below ground including stairwells, basements, penthouse facilities and parking areas of the structure. Each floor of the structure shall be divided into approximately twenty (20) equal test areas (test grid) and the measurements shall be taken at the center of each area. In critical zones (stairwells, lobbies, exit hallways, tunnels, below-ground service entrances, rooftop enclosures or any zone deemed critical by the fire code official), the zone shall be divided into separate test areas with measurements taken every six (6) feet;

(4) A calibrated service monitor (with a factory calibration dated within twenty-four (24) months) may be used to do the test;

(5) The fire code official or telecommunications unit representative for the city may also make simultaneous measurements to verify that the equipment is making accurate measurements. A variance of 3db between the instruments will be allowed; and

(6) If measurements in one location are varying, then average measurements shall be used.

(d) All test results shall be submitted to the fire code official, with a copy provided to the city telecommunications division, in the following format:

(1) An E-size (arch E) floor plan view for each building level showing the location and signal strength for every measurement taken; and

(2) Signal strength readings will be labeled on the plan inside a circle representing a ten (10) foot radius around each measurement point indicating any readings not meeting minimum in-building field strength as set forth in §§ 9-25 and 9-26 by an "x" through the circle.

(e) Initial testing shall be performed at no expense to the city or appropriate emergency services department.
(Ord. No. 2001.25, 9-13-01; Ord. No. 2007.54, 8-16-07; Ord. No. O2014.09, 2-27-14; Ord. No. O2014.14, 3-20-14)

Sec. 9-30. Repealed.
(Ord. No. 2001.25, 9-13-01; Ord. No. 2007.54, 8-16-07; Ord. No. O2014.09, 2-27-14)

Sec. 9-31. Building treatment.

(a) Where buildings and structures are required to provide amenities to achieve adequate signal strength, a city-approved RF engineer shall design a treatment system to resolve building penetration issues. The city will provide a list of qualified RF engineers to the building owner.

(b) It is the responsibility of the building owner to contact the RF engineer and make arrangements for treatment. A signal amplification system design and bill of materials, including implementation costs, shall be provided to the building owner, and the city, by the RF engineer.

(c) Building treatment shall be performed by a city-approved RF engineer and may be monitored by a city telecommunications staff member. System design and implementation shall be performed at no cost to the city or the appropriate emergency services department.
(Ord. No. 2007.54, 8-16-07)

Sec. 9-31.1. Post-treatment testing and proof of compliance.

(a) When an emergency responder radio amplification system is required, and upon completion of installation, the building owner shall have the radio system tested to ensure that two-way coverage on each floor of the building is a minimum of ninety-five percent (95%). The test procedure shall be conducted as described in § 9-29.

(b) Compliance and final acceptance will be determined using the following process:

(1) The test shall be conducted using a calibrated service monitor and verified using a portable radio of the latest brand and model used by the agency talking through the agency's radio communications system;

(2) Failure of a maximum of two (2) nonadjacent test areas shall not result in failure of the test;

(3) In the event that three (3) of the test areas fail the test, in order to be more statistically accurate, the floor shall be permitted to be divided into forty (40) equal test areas. Failure of a maximum of four (4) nonadjacent test areas shall not result in failure of the test. If the system fails the forty-area test, the system shall be altered to meet the ninety percent (90%) coverage requirement;

(4) A test location approximately in the center of each test area shall be selected for the test, with the test unit enabled to verify two-way communications to and from the outside of the building through the public agency's radio communications system. Once the test location has been selected, that location shall represent the entire test area. Failure in the selected test location shall be considered failure of that test area. Additional test locations shall not be permitted;

(5) The gain values of all amplifiers shall be measured and the test measurement results shall be kept on file with the building owner so that the measurements can be verified during annual tests. In the event that the measurement results become lost, the building owner shall be required to rerun the acceptance test to reestablish the gain values; and

(6) As part of the installation, a spectrum analyzer, or other suitable test equipment, shall be utilized to ensure spurious oscillations are not being generated by the subject signal booster. This test shall be conducted at time of installation and subsequent annual inspections.

(c) All RF test results shall be submitted to the fire code official, with a copy provided to the city telecommunications division, in the following format:

(1) An E-size (arch E) floor plan view for each floor and confined space showing the location and signal strength for every measurement taken;

(2) Signal strength readings will be labeled on the plan inside a shaded circle representing a ten (10) foot radius around each measurement point; and

(3) Any readings not meeting minimum in-building field strength as set forth in §§ 9-25 and 9-26 will be noted by an "x" through the circle.

(Ord. No. O2014.09, 2-27-14)

Sec. 9-31.2. Permit required.

A construction permit for the installation of or modification to public safety radio amplification systems and related equipment is required as specified in § 8-107.
(ord. No. O2014.09, 2-27-14)

Sec. 9-32. Annual tests of system performance.

(a) Annual tests will be conducted by a city-approved RF engineer. The city will provide a list of qualified RF engineers to the building owners. If communications appear to have degraded or if the tests fail to demonstrate adequate system performance, the owner of the building or structure is required to remedy the problem and restore the system in a manner consistent with the original approval criteria. Failure to remedy any problems shall render the building and/or any appendages unsafe under §§ 8-108.1 and 108.1.2. Testing shall consist of the following:

(1) In-building coverage test as described in § 9-31.1;

(2) Signal boosters shall be tested to ensure that the gain is the same as it was upon initial installation and acceptance;

(3) Backup batteries and power supplies shall be tested under load of a period of one hour to verify that they will properly operate during an actual power outage. If the battery exhibits symptoms of failure within the one-hour test period, the test shall be extended for additional one-hour periods until the integrity of the battery can be determined;

(4) All other active components shall be checked to verify operation within the manufacturer's specifications; and

(5) At the conclusion of the testing, a report, which shall verify compliance with this article, shall be submitted to the fire code official.

(b) Test results, as set forth in § 9-31.1, shall be provided to city telecommunications staff annually, on or before, the anniversary date of initial acceptance. The re-testing will be performed at no expense to the city or the appropriate emergency services departments as required in the original testing procedures.
(Ord. No. 2001.25, 9-13-01; Ord. No. 2007.54, 8-16-07; Ord. No. O2014.09, 2-27-14)

Sec. 9-33. Condition of occupancy.

A successful demonstration of compliance to §§ 9-25 and 9-26 for buildings referenced in § 9-23 and the testing referenced in § 9-32 shall be completed prior to final approvals issued under § 8-107 for the occupancy of these buildings. Failure to comply with this article shall result in the withholding, or suspension, of a certificate of occupancy from the city.
(Ord. No. 2001.25, 9-13-01; Ord. No. 2007.54, 8-16-07; Ord. No. O2014.09, 2-27-14)

Chapter 10

VIDEO SERVICES SYSTEMS AND CABLE TELEVISION[1]

ARTICLE I. DEFINITIONS

Sec. 10-1. Definitions.

For the purposes of this chapter, the following terms, phrases, words, abbreviations and their derivations shall have the meaning given herein unless they are defined differently in a license, in which case for that license the definition set forth therein shall apply. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. All references to days shall mean calendar days, unless otherwise specified.

(1) *Affiliate* shall mean a company controlled by, under common control with or controlling licensee.

(2) *Basic service* shall mean any service tier, level or package, which includes the retransmission of local television broadcast signals and PEG access channels.

(3) *Cable Act* shall mean the Cable Communications Policy Act of 1984, as amended by the Cable Consumer Protection and Competition Act of 1992 and the Telecommunications Act of 1996 ("1996 Act"), 47 U.S.C. §§ 521 *et seq.* as the same may be amended from time to time.

(4) *Cable operator* shall mean any person or group of persons (a) who provide cable service over a cable television system and directly or through one or more affiliates owns a significant interest in such cable television system, or (b) who otherwise control or are responsible for, through any arrangement, the management and operation of such a cable television system.

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[1]**Editor's note—**Ord. No. 91.33, now contained in this Chapter 10, repealed prior code sections 10-1 through 10-54, Ord. No. 90.50 extended the previous grant of franchise to American Cable Television (granted by Ord. 455.6), which would have expired November 18, 1990 to February 18, 1991.

Editor's note—Ord. No. 97.31 added certain provisions as indicated herein (updated to the Telecommunications Act of 1996).

Editor's note—Ord. No. O2014.74 states that cable licenses granted prior to January 4, 2015 shall continue to be subject to and governed by the provisions of those licenses and when applicable, amendments made by Ordinance 2007.39 and any prior codifications of unrevised sections.

State law reference—Municipal regulation of cable television, A.R.S. § 9-505 et seq.

(5) *Cable services* shall mean the transmission to subscribers of video programming or other programming services and subscriber interaction, if any, that is required for the selection or use of the video programming or other programming services that the licensee makes available to all subscribers generally.

(6) *Cable television system* shall mean a facility consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide cable services which includes video programming and which is provided to multiple subscribers within the city (as hereinafter defined), but such term does not include:

a. A facility that serves only to retransmit the television signals of one or more television broadcast stations;

b. A facility that serves subscribers without using any public right of way;

c. A facility of a common carrier that is subject, in whole or in part, to 47 U.S.C. §§ 201 through 276, except that such facility is considered a cable television system, other than for purposes of 47 U.S.C. § 541(C), to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of the use is solely to provide interactive on-demand services;

d. Any facility of an electric utility used solely for operating its electric utility systems;

e. A facility that serves fewer than fifty (50) subscribers;

f. An open video system that complies with 47 U.S.C. § 573.

(7) *C.F.R.* shall mean the Code of Federal Regulations.

(8) *Change of service* shall mean all requests by existing subscribers for modifications to their video service, including without limitation additions or deletions of premium services, additional outlets, remote controls and FM service. Such term shall not include, initial installation of basic service, total disconnection of basic service or service calls.

(9) *City* shall mean the City of Tempe, a municipal corporation of the State of Arizona, in its present incorporated form or in any later reorganized, consolidated, enlarged or reincorporated form.

(10) *City council* shall mean the present governing body of the city or any future council constituting the legislative body of the city.

(11) *Completion of construction* or *complete system construction* shall mean "satisfactorily complete" and "fully activated" (when applicable). In each instance, these terms shall mean that strand has been put up and all necessary coaxial or fiber optic cable (including trunk and feeder cable) has been lashed—or, for underground construction, that all coaxial or fiber optic cable has been laid and trenches refilled, all road surfaces restored and, except as prevented by weather conditions or delayed because of seasons, landscaping restored; that all amplifier housings and

modules have been installed; that power supplies have been installed; that construction of the headends or hubs has been completed and all necessary processing equipment has been installed; and that any and all other construction necessary for the video services system to be ready to deliver video service to subscribers has been completed. When applicable, final balancing shall have been conducted on each otherwise completed segment of the video services system before direct marketing of that segment begins. It is expected that segments of less than the entire system will be activated and final balanced when completed. Construction of any segment or of the entire system will not be considered complete until final balance has been conducted on such segment (or in the case of the entire system until final balancing and proof of performance tests have been conducted on all segments of the system) and any problems found during testing have been corrected if such balancing is technologically necessary. The term "completion of construction" does not include marketing and installation of subscriber service.

(12) *Educational access* shall mean access where educational institutions are the primary or designated programmers or users having editorial control over their programming on a designated channel.

(13) *Facilities* shall mean a license's network, equipment, boxes, cabinets, wires, pipe, conduit, coaxial or fiber optic cable, pedestals and antenna.

(14) *FCC* shall mean the federal communications commission.

(15) *Government access* shall mean access where governmental institutions are the primary or designated programmers or users having editorial control over their programming on a designated channel.

(16) *Gross revenues* shall be defined as in A.R.S. § 9-505(6), unless otherwise defined in a license granted by the city to a video services provider who is not also a cable operator.

(17) *Hazardous substances* shall mean any substance, chemical or waste that is identified as hazardous or toxic in any applicable federal, state or local law or regulation, including but not limited to petroleum products and asbestos.

(18) *Initial activation of video service* or *initially providing video service* shall mean with respect to a particular segment (as defined in any license issued hereunder), or with respect to a group of segments or the entire video services system, as the case may be, that, all proposed video services and video services system capabilities as stated in the license are available or in place, construction has been completed (see above definition of construction) and the completed segment or segments in question or the entire video services system, as the case may be, have been activated.

(19) *Initial license* shall mean a license sought by, or granted to, a person who does not hold a license.

(20) *License* shall mean the nonexclusive right and authority granted under this chapter to construct, operate and maintain a video services system in the city, including initial licenses and renewal licenses (as hereinafter defined). Any such authorization, in whatever term granted, shall not mean and include any license or permit required for the privilege of transacting and carrying on a business within the city in accordance with Article II of Chapter 16.

(21) *Licensee* shall mean the person, firm or corporation to whom or which a license is granted by the city council under this chapter, and the lawful successor, transferee or assignee of said person, firm or corporation.

(22) *Local origination programming* shall mean video programming locally produced by a licensee.

(23) *Network* shall mean a communication system that can be used to transmit voice, video and data using coaxial cable, optical fiber or hybrid fiber-coaxial cable.

(24) *Normal business hours* shall mean those hours during which most similar business in the city are open to serve subscribers. In all cases, "normal business hours" must include some evening hours at least one night per week and some weekend hours.

(25) *Normal operating conditions* shall mean those service conditions which are within the control of the licensee. Those conditions which are not within the control of the licensee include, but are not limited to, natural disasters, civil disturbances, utility company power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the licensee include, but are not limited to, special promotions, pay-per-view events, rate increase, regular peak or seasonable demand periods, and maintenance or upgrade of the video services system.

(26) *Other programming service* shall mean information that a video services provider makes available to all subscribers generally.

(27) *Outage* shall exist whenever licensee's video services system experiences a "no picture" or a “picture freeze”.

(28) *PEG channels* shall mean public access, educational access and government access channels for availability for use by various agencies, institutions, organizations, groups and individuals in the community to acquire, create and distribute video programming not under the licensee’s editorial control.

(29) *Public access* shall mean access where organizations, groups or individual members of the general public, on a nondiscriminatory basis, are the primary or designated programmers or users having editorial control over their programming on a channel.

(30) *Person* shall mean an individual, partnership, corporation, association, joint venture or organization of any kind and the lawful trustee, successor, assignee, transferee or personal representative thereof.

(31) *Property of licensee* shall mean all property owned, installed or used by a licensee in the conduct of a video services system business in the city under the authority of a license granted pursuant to this chapter.

(32) *Renewal license* shall mean a license sought by, or granted to, a video services provider already providing video services in the city.

(33) *Right-of-way* shall mean the surface of and the space above and below all roads, streets, alleys, sidewalks and all other dedicated public rights-of-way and public utility easements within the city.

(34) *Service call* shall result when service problems occur relating to: (i) any "no picture" complaint, (ii) a degraded signal or picture on one or more channels, (iii) property damage by licensee's employees or authorized contractors, or (iv) in-house video equipment problems.

(35) *Service interruption* shall mean the loss of picture or sound on one (1) or more channels or the significant deterioration of signal or sound.

(36) *Standard drop* shall mean a physical service connection from the nearest point of a subscriber's home or business to the nearest active tap on the video services system. For permit purposes, a standard drop is measured as no more than one hundred fifty (150) feet within the right-of-way from the point of the active tap to the point where the service connection enters the property of the subscriber's home or business. A standard drop involves only one outlet and standard materials and does not involve a wall fish. In addition, a "standard drop" shall exclude custom installation work, including specific subscriber requested work that requires non-standard materials or cable routing requiring construction methods exceeding reasonable underground or aerial work.

(37) *Subscriber* shall mean any person or entity receiving for any purpose the video services of a licensee's video services system.

(38) *Two-way communication* shall mean the transmission of telecommunication signals from subscriber locations or other points throughout the cable television system back to the cable television system's control center as well as transmission of signals from the control center to subscriber locations.

(39) *U.S.C.* shall mean United States Code.

(40) *User* shall mean a party utilizing a video services system channel for purposes of production or transmission of material to subscribers, as contrasted with receipt in a subscriber capacity.

(41) *Video programming* shall mean programming that is provided by, or generally comparable to programming provided by a broadcast television station or programming network.

(42) *Video services* shall mean the provision of video programming without regard to delivery technology, including internet protocol technology, whether provided as part of a tier, on demand, or a per channel basis. This definition includes cable services provided by a cable operator using a cable television system, but does not include any video programming provided by a commercial mobile service provider as defined in 47 U.S.C. § 332(d), or any video programming provided solely as part of and via a service that enables users to access content, information, electronic mail, messaging or other services offered over the public internet or internet access service.

(43) *Video services provider* shall mean any entity that distributes video services through a video services system pursuant to a video services system license.

(44) *Video services system* shall mean a wireline network, or any component thereof, located at least in part in the public right-of-way that delivers video services.

(45) The terms "will be available," "will be equipped," "will use," "will be designed," "will perform," "will be utilized," "will permit," "will allow," "will be activated," "will be initially connected," "will be capable," "will provide," "will include," "will employ," "will be established," "will be able," "will be implemented," "will be delivered," "will utilize," and other similar uses of terms of a licensee's proposal denoting the activation of video service, shall be interpreted to mean delivery or accomplishment at a date no later than the initial activation of video service (as defined in this section) unless otherwise expressly and clearly stated or qualified in the licensee's proposal to mean a more specific or different time.
(Ord. No. 91.33, 10-17-91; Ord. No. 97.31, 5-29-97; Ord. No. 2007.39, 6-28-07; Ord. No. O2014.74, 12-4-14)

Secs. 10-2—10-4. Reserved.

ARTICLE II. PROCEDURES FOR GRANTING, RENEWING, TRANSFERRING AND ACQUIRING VIDEO SERVICES SYSTEM LICENSES

Sec. 10-5. Require a license to operate.

A non-exclusive license to construct, operate and maintain a video services system within all or any portion of the city is required of anyone desiring to provide video services in the city. A license may be granted by the city council to any person, whether operating under an existing license or not, who offers to furnish and provide such video services under and pursuant to the terms and provisions of this chapter and the license. A video services system license shall require that a cable operator comply with the federal and state laws applicable to cable operators. (Ord. No. 91.33, 10-17-91; Ord. No. O2014.74, 12-4-14)

Sec. 10-6. Violations by non-licensed persons.

(a) It shall be unlawful for any person to establish, operate or to carry on the business of distributing to any persons in this city video services by means of a video services system unless a license has first been obtained pursuant to the provisions of this chapter, and unless such license is in full force and effect.

(b) It shall be unlawful for any person to construct, install or maintain within any public right-of-way or public property of the city, or within any privately-owned area within the city which has not yet become a public street but is designated or delineated as a proposed public street on any tentative subdivision map approved by the city, any equipment or facilities for a video services system, unless a license authorizing such use of such right-of-way or property or area has first been obtained pursuant to the provisions of this chapter, and unless such license is in full force and effect.

(c) It shall be unlawful for any person to make any unauthorized connection, whether physically, electrically, acoustically, inductively or otherwise, with any part of a licensed video services system within this city for the purpose of enabling him or herself or others to receive any television signal, radio signal, picture, program or sound, without the permission of the licensee.

(d) It shall be unlawful for any person, without the consent of the licensee, to willfully tamper with, remove or injure any cables, fiber, wires or equipment used for distribution of television signals, radio signals, pictures, programs or sound.

(e) Any person that violates subparts (a) or (b) shall not receive any permits or other authorizations for construction or installation of any facilities in the public right-of-way or on public property until such company has first obtained a license. If there are any such permits that have been issued, these will be either revoked or held until the person has obtained a license.

(f) Any person violating subparts (c) or (d) is guilty of a class one misdemeanor.
(Ord. No. 91.33, 10-17-91; Ord. No. O2014.74, 12-4-14)

Sec. 10-7. Authorization to engage in business.

(a) Any license granted pursuant to the provisions of this chapter shall authorize and permit the licensee to engage in the business of operating and providing a video services system

in the city, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain and retain in, on, over, under, upon, across and along any right-of-way, such poles, wires, optical fiber or other cable, conductors, ducts, conduit, vaults, manholes, amplifiers, and any related device, apparatus or auxiliary equipment as may be necessary and allowed by the license for the video services system. Licensee may also so use, operate and provide similar facilities or properties rented, licensed or leased from other persons, firms or corporations, including but not limited to any public utility or other licensee licensed or permitted to do business in the city; provided, however, that neither the licensee nor the third party shall be relieved of any regulation or obligation as to its use of such facilities in the streets.

(b) Nothing in this chapter shall be deemed to prevent a cable operator from engaging in the provision of any telecommunications service (as defined in the 1996 Act) authorized or permitted by applicable federal or state law or regulation or to impose any requirement that has the purpose or effect of prohibiting, limiting, restricting or conditioning the provision of telecommunications service by a cable operator or its affiliates (as defined in the 1996 Act). However, any license issued under this chapter shall not be deemed authorization to provide telecommunications when the applicable law requires such a telecommunications license.

(c) Nothing in this chapter shall be deemed to apply the cable act to a licensee who is not considered a cable operator under federal law.
(Ord. No. 91.33, 10-17-91; Ord. No. 97.31, 5-29-97; Ord. No. O2014.74, 12-4-14)

Sec. 10-8. Limitations of license.

(a) Any license granted under this chapter shall be nonexclusive.

(b) Any privilege claimed under any license by the licensee in any public right-of-way or other public property shall be subordinate to any prior or subsequent lawful occupancy or use thereof by the city or any other governmental entity, shall be subordinate to any prior lawful occupancy or use thereof by any other person, and shall be subordinate to any prior easements therein; provided, however, that nothing herein shall extinguish or otherwise interfere with property rights established independently of any license issued pursuant to this chapter.

(c) Any right or power in, or duty imposed upon, any officer, employee, department or board of the city shall be subject to transfer by the city to any other officer, employee, department or board of the city.

(d) A licensee shall be subject to all requirements of city's rules, regulations and specifications heretofore or hereafter enacted or established, and shall comply with all applicable state and federal laws and regulations heretofore or hereafter enacted or established. There is hereby reserved to the city the power to amend any section of this chapter so as to require additional or greater standards of construction, operation, maintenance or otherwise pursuant to the city's lawful police powers or as provided in the license.

(1) If any state or federal law or regulation shall require the licensee to perform any service, or shall permit the licensee to perform any service, or shall prohibit the licensee from performing any service, in conflict with the terms of its license or any law or regulation of the city, then as soon as possible following knowledge of such conflict, the licensee or the city shall notify the other party of the

conflict believed to exist between such state or federal law or regulation and the laws or regulations of the city.

(2) If the city council determines that a material provision of this chapter is affected by any subsequent action of the state or federal government, the city council shall have the right to modify any of the provisions herein to such reasonable extent as may be necessary to carry out the full intent and purposes of this chapter consistent with state or federal law.

(e) Any license granted shall not relieve the licensee of any obligation involved in obtaining pole space from any department of the city, utility company or from others maintaining poles in streets.
(Ord. No. 91.33, 10-17-91; Ord. No. O2014.74, 12-4-14)

Sec. 10-9. Acquisition by city.

(a) In accordance with A.R.S. § 9-509 and Section 627 of the Cable Act, 47 U.S.C. § 547, if a renewal of a license held by a cable operator licensee is denied or revoked for cause and the city acquires ownership of the cable television system or effects a transfer of ownership of a cable television system to another person, any such acquisition or transfer shall be at fair market value, determined on the basis of the cable television system valued as a going concern but with no value allocated to the license itself.

(b) The fair market value of a cable system shall be determined by an appraisal committee consisting of three (3) disinterested appraisers. The appraisal process shall be conducted in accordance with the following procedures:

(1) Each party shall appoint an appraiser within thirty (30) days after the city sends notice initiating appraisal proceedings. The two (2) appraisers shall select a third appraiser within thirty (30) days after selection of the second appraiser. If the two (2) appraisers are unable to agree on the appointment of a third appraiser within such thirty (30) day period, either the city or the licensee may petition the judge of the Maricopa County Superior Court, acting in his or her individual capacity, for the selection of a third appraiser;

(2) Each party shall bear the cost of its own appraiser and one-half (1/2) of the cost of appointing the third appraiser and of paying the third appraiser's fee. The third appraiser, however selected, shall be a person who has not previously acted in any capacity for either the city or the license; and

(3) Within thirty (30) days after selection of the third appraiser, the appraisers shall meet and set the value of the cable television system consistent with the requirements of this section.

(c) Upon the termination of a license and the rights granted thereunder, whether by expiration or revocation, the city manager may direct and require the cable operator licensee as provided in § 10-47 to remove its wires, cables, fixtures and accessories and appurtenances from the streets to the extent practical. To this accomplishment, if directed, the city shall make a claim on the letter of credit as prescribed in § 10-73.
(Ord. No. 91.33, 10-17-91; Ord. No. O2014.74, 12-4-14)

Sec. 10-10. Rights reserved to the city.

(a) Nothing herein shall be deemed or construed to impair or affect, in any way, to any extent, the right of the city to contract away or to modify or abridge, either for a term or in perpetuity, the city's right of eminent domain at fair market value.

(b) There is hereby reserved to the city every right and power which is required to be herein reserved or provided by any provision of the city code, and a licensee shall comply with any action or requirements of the city in its exercise of such rights or power heretofore or hereafter enacted or established.

(c) Neither the granting of any license hereunder nor any of the provisions contained herein shall be construed to prevent the city from granting any identical, or similar, license to any other person, firm or corporation, within the city.

(d) Neither the granting of any license nor the enactment of any provision in this chapter shall constitute a waiver or bar to the exercise of any governmental right or power of the city, now existing or hereafter granted.

(e) The city council may do all things which are necessary and convenient in the exercise of its jurisdiction under this chapter and may, through the city manager (or the city manager's designee) or through its own action, adjust, settle, compromise or otherwise resolve, pursuant to §§ 10-76 and 10-77, any controversy or charge arising from the operations of any licensee under this chapter.
(Ord. No. 91.33, 10-17-91; Ord. No. O2014.74, 12-4-14)

Sec. 10-11. Applications for initial license, content.

Each application for an initial license to construct, operate or maintain any video services system in the city shall be sent to the city manager’s office and be on a form prescribed by the city. Said form shall require at least the following information:

(1) The applicant company’s name, business address, telephone number, state of incorporation and its designated contact’s name, address, e-mail and phone number;

(2) The names of the applicant’s officers and directors;

(3) A description of the geographic area the applicant proposes to serve;

(4) A description of the network and facilities to be placed in the right-of-way, including any underground, overhead or surface mounted equipment proposed to be installed;

(5) A description of the type of technology used to deliver the video services;

(6) The PEG channel capacity and support and any public benefit proposed by the applicant;

(7) The requested length of the term of the license;

(8) Whether the applicant holds an existing authorization to access the right-of-way in the area described in (3) above;

(9) Any other details, statements, information or references pertinent to the subject matter of such application which shall be required or requested by the city council, city manager or by any other provision of law.

(Ord. No. 91.33, 10-17-91; Ord. No. O2014.74, 12-4-14)

Sec. 10-12. Application fee for initial license.

Unless prohibited by law, a nonrefundable application fee will be required to partially or wholly cover all administrative, engineering, publication or legal costs and consultants' expenses incurred in connection with the processing, evaluation and preparation of documents relating to the initial license in the amount of five thousand dollars ($5,000.00) or such higher amount as set by the city council per resolution. Where allowed by law, licensee may offset any application fee paid against future license fees paid to the city.

(Ord. No. 91.33, 10-17-91; Ord. No. 2007.39, 6-28-07; Ord. No. O2014.74, 12-4-14)

Sec. 10-13. Selection of licensee under an initial license.

(a) *Applicant responsibility.* Before submitting an application, each applicant shall:

(1) Be familiar with local conditions which may in any manner affect performance under the license, including, but not limited to, community and institutional telecommunication needs, relevant demographics, topographies, pole attachment policies of appropriate utility authorities, undergrounding and subscriber desires; and

(2) Be familiar with all applicable federal, state and local laws, chapters, rules and regulations affecting performance under the license.

(b) *License negotiations.* Upon receipt of any application for an initial license, the city manager or designee(s) shall evaluate the application and work with the applicant on the terms of the license. An applicant will be offered the opportunity to make a formal presentation to the city council in support of its application and the proposed license with the city.

(c) *Public comment.* When required by state law, prior to issuing the license, the city council shall hold a public hearing following reasonable notice to the public, at which an applicant, its application and the proposed license agreement shall be available for examination by the public and all interested parties afforded a reasonable opportunity to be heard. Reasonable notice to the public shall include causing notice of the time and place of such hearing to be published in a newspaper of general circulation in the proposed service area once a week for two

consecutive weeks. The first publication shall be not less than fourteen (14) days before the day of such hearing.

(d) *Consideration.* In making any determination hereunder as to any application for an initial license and when allowed by law, the city may consider any and all factors relevant to significant interests of the community including, but not limited to the quality of the video services proposed, areas to be served, income to the city, relevant experience, financial responsibility of the applicant, willingness and ability to meet construction and physical requirements, to meet all requirements set forth in this chapter, and to abide by all policy conditions, license limitations and requirements, and all other matters deemed pertinent by the city for safeguarding the interests of the city and the public.

(e) *Determination.* At the time set for the hearing on the application for an initial license, or at any adjournment thereof, the city council shall proceed to hear all comments and make its decision on whether to approve the license agreement within any applicable time limits prescribed by law.

(f) *Additional information.* The city council may at any time demand and applicant(s) shall provide such supplementary, additional or other information reasonably necessary to determine whether the requested license agreement should be approved.

(g) *City council decisions shall be final.* Any decision of the city council concerning award of an initial license pursuant to this chapter shall be final.
(Ord. No. 91.33, 10-17-91; Ord. No. O2014.74, 12-4-14)

Sec. 10-14. Duration of license and renewal.

(a) The duration of the rights, privileges and authorizations granted in a license shall be at least for an initial term of ten (10) years from the date a license is awarded. A license may be renewed as provided by the license or upon application of the cable operator licensee pursuant to the procedure established in subsection (b) of this section if such is in accordance with the then applicable law.

(b) *Renewal by a cable operator licensee.*

(1) During the six (6) month period which begins with the thirty-sixth month before the license expiration, the city may on its own initiative, and shall at the request of the cable operator licensee, commence proceedings which afford the public appropriate notice and participation for the purpose of:

a. Identifying the future cable-related community needs and interests; and

b. Reviewing the performance of the cable operator licensee under the license during the then current license term.

(2) a. Upon completion of a proceeding under subsection (b)(1) of this section, the cable operator licensee seeking renewal of a license may, on its own initiative or at the request of the city, submit a proposal for renewal.

b. Subject to Section 624 of the Cable Act, 47 U.S.C. § 546, such proposal by a cable operator shall contain such material as the city may require, including proposals for an upgrade of the cable television system.

c. The city may establish a date by which such proposal shall be submitted.

(3) a. Upon submittal by the licensee of a proposal to the city for the renewal of the license, the city may provide prompt public notice of such proposal and, during the four (4) month period which begins on the completion of any proceedings under subsection (b)(1), renew or modify the license or, issue a preliminary assessment that the license should not be renewed and, at the request of the licensee or on its own initiative, commence an administrative proceeding, after providing prompt public notice of such proceeding, in accordance with paragraph (3)(b) to consider whether:

i. The licensee has substantially complied with the material terms of the existing license and with applicable law;

ii. The quality of the licensee's service, including signal quality, response to consumer complaints and billing practices, but without regard to the mix, quality or level of cable services or other services provided over the cable television system, has been reasonable in light of community needs;

iii. The licensee has the financial, legal and technical ability to provide the services, facilities and equipment as set forth in the licensee's proposal; and

iv. The licensee's proposal is reasonable to meet the future video services-related community needs and interests, taking into account the cost of meeting such needs and interests.

b. In any proceeding under paragraph (3)(a), the cable operator licensee shall be afforded adequate notice and such licensee and the city or its designee, shall be afforded fair opportunity for full participation, including the right to introduce evidence (including evidence related to issues raised in the proceeding under subsection (b)(1), to require the production of evidence and to question witnesses. A transcript shall be made of any such proceeding.

c. At the completion of a proceeding under this subsection, the city shall issue a written decision granting or denying the proposal for renewal based upon the record of such proceeding, and transmit a copy of such decision to the cable operator Licensee. Such decision shall state the reasons therefor.

(4) Any denial of a proposal for renewal shall be based on one or more adverse findings made with respect to the factors described in subparagraphs (i) through (iv) of paragraph (3)(a), pursuant to the record of the proceeding under

paragraph (3). The city may not base a denial of renewal on a failure to substantially comply with the material terms of the license under paragraph (3)(a)(i) or on events considered under paragraph (3)(a)(ii) unless the city has provided the cable operator licensee with notice and the opportunity to cure, or in any case in which it is documented that the city has waived its right to object, or has effectively acquiesced.

(5) Any cable operator licensee whose proposal for renewal has been denied by a final decision of the city made pursuant to this section, or has been adversely affected by a failure of the city to act in accordance with the procedural requirements of this section, may appeal such final decision or failure pursuant to the provisions of Sections 626 and 635 of the Cable Act, 47 U.S.C. §§ 546 and 555.

(6) Notwithstanding the provisions of paragraphs (1) through (5) of subsection (b) of this section, the cable operator licensee may submit a proposal for the renewal of the license pursuant to this subsection at any time, and the city may, after affording the public adequate notice and opportunity for comment, grant or deny such proposal at any time (including after proceedings pursuant to this section have commenced). The provisions of paragraphs (1) through (5) of subsection (b) of this section shall not apply to a decision to grant or deny a proposal under this subsection. The denial of a renewal pursuant to this subsection shall not affect action on a renewal proposal that is submitted in accordance with paragraphs (1) through (5) of subsection (b) of this section.

(Ord. No. 91.33, 10-17-91; Ord. No. 2007.39, 6-28-07; Ord. No. O2014.74, 12-4-14)

Sec. 10-15. Transfers and assignments.

(a) A license shall not be sold, assigned or transferred, either in whole or in part, or leased, sublet or mortgaged in any manner, except to an affiliate or subsidiary of licensee, without prior written consent of the city, which consent shall not be unreasonably withheld. Such consent shall not be required for a transfer in trust, mortgage, or other hypothecation in whole or in part to secure an indebtedness. The proposed assignee must show the transfer will not cause any increased risks of nonperformance of the license or any loss to the city of its bargained for consideration in the license. The proposed purchaser, transferee or assignee must show financial responsibility as determined by the city and must agree to comply with all provisions of the license.

(b) When applicable, an assignment or transfer of control of a cable television system will be subject to the requirements of 47 U.S.C. §§ 533(d) and 537, FCC regulations at 47 CFR § 76.502 and the submission of the appropriate form for doing so.

(c) The consent or approval of the city council to any transfer of a license shall not constitute a waiver or release of the rights of the city in and to the right-of-way and any transfer shall, by its terms, be expressly subordinate to the terms and conditions of the license.

(d) In no event shall a transfer of ownership or control be allowed without the successor-in-interest becoming a signatory to the license, providing a new letter of credit and performance bond (when applicable), maintaining all required insurance policies and providing a new

certificate of insurance, settling any existing license obligations and resolving any license violations.
(Ord. No. 91.33, 10-17-91; Ord. No. O2014.74, 12-4-14)

Secs. 10-16—10-19. Reserved.

ARTICLE III. LICENSE REQUIREMENTS

Sec. 10-20. Incorporation of application by reference.

(a) Upon award of a license pursuant to this chapter, a licensee shall agree to be bound by all the applicable terms and conditions contained herein.

(b) Failure to abide by the applicable terms and conditions of license will be deemed a breach of the license and this chapter to which the provisions of §§ 10-73 through 10-75 and 10-87 shall apply.
(Ord. No. 91.33, 10-17-91; Ord. No. 2007.39, 6-28-07; Ord. No. O2014.74, 12-4-14)

Sec. 10-21. Fees, costs and payments.

(a) For the reason that the streets and other public rights-of-way which are used by the licensee in the operation of its video services system within the boundaries of the city are valuable public properties acquired and maintained by the city at great expense to its taxpayers, and that the grant to the licensee to the use of said streets is a valuable property right without which the licensee would be required to invest substantial capital in right-of-way costs and acquisitions, and because the city will incur costs in regulating and administering the license, the licensee shall pay to the city an amount no less than five percent (5%) of licensee's gross revenues ("the license fee"). Should federal or state regulations be amended in the future to allow the city to receive a greater fee than the fee set forth in subsection (a), then, in that event, the city shall have the right to increase the fee as provided by law.

(b) If a licensee offers subscribers a price discount if they obtain a bundle of voice, video and data services, then beginning on the effective date of this license for the purpose of computing gross revenues, the discount shall be allocated either (1) consistent with the prices published in licensee’s marketing materials for separate video service or rate for separate video service or one or more non-video services or (2) in proportion to the value of those video services and non-video services for which individual prices are not published. It is the intent of this subsection that a licensee not bundle video services with non-video services in such a manner that the amount of gross revenues attributed to the video services will reduce the license fees payable under the license. Allocation under (2) above shall be in accordance with the following examples:

(1) The amount of any discount on a bundle of services shall be determined from the sum of the lowest stand-alone rates available to a subscriber or class of subscribers for each of the goods and services which are offered at the combined rate, as follows: assume a subscriber’s charges for a given month for video services alone would be eighty dollars ($80.00), for local telephone service alone sixty dollars ($60.00), and for internet service alone sixty dollars ($60.00), for a total of two hundred ($200.00). If a licensee offers the three (3) services at a combined rate of one hundred sixty dollars ($160.00) (i.e. the subscriber in effect receives a twenty (20) percent discount from the regular retail rates that would apply to the services if purchased individually), for license fee computation, gross revenues from video services would be deemed to be forty eight dollars ($48.00) (sixty dollars ($60.00 less twenty (20) percent).

(2) Assume the same facts as in the preceding example, except that the subscriber also purchases optional packages or premium video channels at a fixed fee of thirty dollars ($30.00) a month that is not included in the bundled service offering the discount (i.e. the discount does not apply to this service) for a total of one hundred ninety ($190.00) (one hundred sixty dollars ($160.00) bundle offer, plus thirty dollars ($30.00)). Gross revenues would be seventy eight dollars ($78.00) (forty eight dollars ($48.00) from the prior example of bundled services plus the undiscounted thirty dollars ($30.00)).

(3) Nothing herein shall be construed to require a licensee to offer any service at a price, where the price for that service is otherwise established by law or regulation.

(c) Licensee shall also be responsible for reasonable costs that are associated with damage to the right-of-way or city infrastructure within the right-of-way caused by the construction, maintenance and operation of its network or facilities and pay any fines, fees, charges or damages for breach of the terms and conditions of the license as outlined in the license agreement. Such costs shall not be subject to any offset of license fees owed.

(d) The payment of the license fee by the licensee to the city shall be made quarterly by delivery of the same to the chief financial officer of the city on or before the 20th day of the following month. At the time license fees are due, licensee will provide to the city an itemized report that includes the following information:

(1) A current revenue statement showing the gross revenues by the licensee during the preceding quarter;

(2) The amount of gross license fees due to the city;

(3) A detailed report of all costs incurred by licensee by permit number (when applicable) of any fees imposed by the city and paid by the licensee for which the licensee is claiming state law allows to be offset to the license fees owed; and

(4) The amount of license fees owed and being paid to the city after accounting for any offset.

(e) If such payment is not made by the next to the last business day of the following month, the city may impose interest at a rate of one and one-half percent (1-1/2%) per month commencing from the date payment should have been made and continuing until the payment is made. Fractions of a month shall be considered to constitute a full month for the purpose of computing interest. In addition to interest which may be assessed under this subsection, if licensee fails to pay any license fee, before the end of such grace period, licensee shall be subject to the following civil penalties:

(1) A licensee who fails to pay the license fee or any portion thereof within the time prescribed shall pay a penalty of ten percent (10%) of the unpaid fee each

month, unless the licensee shows that the failure is due to reasonable cause and not due to willful neglect;

(2) A licensee who fails or refuses to pay a license fee or any portion thereof after notice and demand by the city shall pay a penalty of twenty-five percent (25%) of the unpaid fee, unless licensee shows that the failure is due to reasonable cause and not due to willful neglect; or

(3) If the cause of failure to pay the license fee or any portion thereof is determined by the city to be due to civil fraud or evasion of the license fee, the licensee shall pay a penalty of fifty percent (50%) of the amount of deficiency.

(f) The city shall have the right to inspect the licensee's income records and the right to audit and to recompute any amounts determined to be payable under this chapter; provided, however, that such audit shall take place within thirty-six (36) months following the close of each of the licensee's fiscal years. Any additional amount due to the city as a result of the audit shall be paid within thirty (30) days following written notice to the licensee by the city and said notice shall include a copy of the audit report.
(Ord. No. 91.33, 10-17-91; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10; Ord. No. O2014.74, 12-4-14)

Sec. 10-22. Use of telephone facilities.

When and in the event that the licensee of any license granted hereunder uses a telephone company's video services system distribution channels furnished to the licensee pursuant to tariff or contract on file with a regulatory body having jurisdiction and said licensee makes no use of the streets independent of such telephone company furnished facilities, said licensee remains fully bound by the terms of its license and this chapter.
(Ord. No. 91.33, 10-17-91; Ord. No. O2014.74, 12-4-14)

Sec. 10-23. Required services and facilities.

(a) A license shall include a description of proposed video services system design and a description of the initial programming and video services to be offered, a description of facilities proposed for local programming, and facilities to be offered to various community institutions.

(b) A licensee shall maintain the mix, level and quality of programming within the broad categories of video programming or other services set forth in its license. Where there has been a substantial failure to maintain the mix, level or quality of services within the broad categories of video programming or other services as set forth in the licensee's license, the city manager or designee may direct the licensee to comply with its obligations in this regard. To the extent not prohibited by federal or state law, a licensee will provide a public benefit to the community as agreed upon by the licensee and the city and as set forth in the license. Such public benefit will not modify or otherwise affect licensee’s obligation to pay license fees to the city under section 10-21 and any additional commitments under this section are not to be offset or otherwise credited in any way against any license fee payment under the license.
(Ord. No. 91.33, 10-17-91; Ord. No. O2014.74, 12-4-14)

Sec. 10-24. Subscriber service rates.

(a) *Authority to regulate rates.* If and when permitted by federal and state law, regulation by the city of the rates for a cable television system's basic service will be set forth in the license.

(b) *Information on rates and charges.* Licensee shall provide information to the city and subscribers of the applicable rates and charges for video services. Prior to implementing a change in rates, programming services or channel positions, licensee shall provide electronic or written notice to the city and subscribers within the amount of time set forth in the license.
(Ord. No. 91.33, 10-17-91; Ord. No. O2014.74, 12-4-14)

Sec. 10-25. Public, educational and government access channels.

(a) City shall not directly or indirectly control the content of any of the programming on a video services system except those channels dedicated to government access.

(b) Licensee will provide the city high-definition (HD) channel capacity for up to two (2) channels of PEG access programming in the basic service tier, level or package and up to two (2) HD channels of noncommercial governmental programming in the digital programming tier of the video services system. City may require one (1) or more of such channels to be secured/scrambled, meaning that the programming is not transmitted to or available at locations other than those designated by city. If channel capacity is required, the programming shall be specified in the license and licensee may require that the channels regularly display an unobtrusive logo or other suitable identifier as set forth in the license.

(c) A license may require the licensee to incur costs and expenses to provide, maintain and operate facilities and equipment of the video services system, including facilities and equipment for signal carriage, processing, reformatting and interconnection to connect the video services system, as it may be relocated from time to time, to transmit programming to and from existing locations of PEG channel facilities and to allow monitoring of access programming to the facilities. A licensee shall transmit PEG channels to subscribers with at least high-definition (HD) quality video signal or signals.

(d) The value of any channel capacity provided pursuant to subsection (b) above and the costs and expenses related to meeting the requirements of subsection (c) above may not be offset against the license fee owed by licensee to city.

(e) A license can require the licensee to provide basic service and the HD PEG channels to city offices and facilities at no charge to the city.
(Ord. No. 91.33, 10-17-91; Ord. No. 97.31, 5-29-97; Ord. No. 2007.39, 6-28-07; Ord. No. O2014.74, 12-4-14)

Sec. 10-26. Interconnection.

The city consents to the reciprocal interconnection of its PEG channels if licensee chooses to interconnect with another video services provider for such purposes. All signals to be interconnected will comply with applicable FCC technical standards for all classes of signals and will be transmitted with reasonable equivalency so that there is no degradation of the signal.
(Ord. No. 91.33, 10-17-91; Ord. No. O2014.74, 12-4-14)

Sec. 10-27. New developments.

(a) The licensee shall make a good faith effort to keep the cable system technically current and updated.

(b) The city and licensee shall meet at periods not exceeding three (3) years or upon the request of either to discuss changes in cable television laws, regulations, technology, competing services, the needs of the community and other factors affecting cable television. As a result of these discussions, the license agreement may be modified by mutual agreement of the city and the licensee to respond to the change in laws, regulations, technology, competing services, the needs of the community or other factors impacting cable television.

(c) If any of the following conditions occur, and upon written request of either licensee or city, the city manager and licensee agree to meet and discuss in good faith the terms of a mutually agreeable license amendment:

(1) Cable service similar to cable television service offered by licensee is provided by any entity using the streets, which is not subject to similar licensing requirements of the city;

(2) The cable act is amended in a manner which licensee or city believe may impact the current terms and conditions of the license; or

(3) Any other significant event occurs, including but not limited to, a final non-appealable order or judgment by a court of competent jurisdiction, which either licensee or city believes may impact the current terms and conditions of the license.

(d) The purpose of the meeting and discussion is to use best efforts to reach mutually acceptable agreement for recommendation to the council for proposed council action within ninety (90) days of such written request, on how to amend the license to relieve city or the licensee from any commercial impracticability which arises from the condition in question. This provision shall not require that the license be amended, however, it is intended to facilitate a process whereby the parties may reach a mutually acceptable agreement.
(Ord. No. 91.33, 10-17-91; Ord. No. 97.31, 5-29-97)

Sec. 10-28. Time is of the essence.

For any license or contract entered into pursuant to this chapter time shall be deemed of the essence and any failure of the licensee to perform within the time allotted, or within a reasonable time if a period is not specified, shall be sufficient grounds for the city to invoke liquidated damages or revocation of a license in accordance with §§ 10-75 and 10-78.
(Ord. No. 91.33, 10-17-91)

Sec. 10-29. Acceptance and effective date of license.

The date specified in the license shall be the effective date of the license, but if no such date is specified, the date on which the last of the parties sign the license shall be the effective date.
(Ord. No. 91.33, 10-17-91; Ord. No. 2007.39, 6-28-07)

Secs. 10-30—10-34. Reserved.

ARTICLE IV. CONSTRUCTION REQUIREMENTS

Sec. 10-35. Permits, installation and service.

Prior to construction, the licensee shall apply for and obtain necessary permits and authorizations which are required in the conduct of its business, including, but not limited to, any utility joint use attachment agreements, microwave carrier licenses, and any other permits, licenses and authorizations to be granted by duly constituted regulatory agencies having jurisdiction over the operation of video services systems, or their associated microwave transmission facilities.
(Ord. No. 91.33, 10-17-91; Ord. No. 2007.39, 6-28-07; Ord. No. O2014.74, 12-4-14)

Sec. 10-36. Video services availability and mapping.

(a) Upon request by the city, licensee will provide the appropriate map(s) and any updates of its video services system as set forth in the license.

(b) Installation and operation of the video services system by licensee shall proceed on a nondiscriminatory basis, without regard for subscriber affluence or other discriminatory factors.

(c) Immediately following commencement of construction and installation of the video services system, licensee shall diligently proceed to offer video services, as described in the license.

(d) Failure on the part of the licensee to adhere to each of the foregoing requirements can be grounds for liquidated damages or other appropriate remedies as outlined in such license.
(Ord. No. 91.33, 10-17-91; Ord. No. 2007.39, 6-28-07; Ord. No. O2014.74, 12-4-14)

Sec. 10-37. System deployment and line extension.

(a) *Residential service deployment.* For initial licenses issued on or after January 4, 2015, licensee will use commercially reasonable efforts to design, instrumentally construct and install a video services system available to all dwelling units within the city except that licensee shall not be required to make video services available to residents of multiple dwelling units where the owner of the property has not granted licensee reasonable access to the property.

(b) *Residential service line extension.*

(1) When requested by a resident or developer of the city, an incumbent cable operator licensee (processing a license prior to July 1, 2007) shall, at its sole expense, extend cable services to any single family residence or dwelling within the city, provided that such extension involves existing density of forty (40) homes per mile as measured in linear trench or aerial strand footage from the nearest technically feasible point on the system. Such extension(s) shall include cutting in one or more taps and extending feeder cable and, when necessary, trunk cable;

(2) When a resident or developer of the city requests an extension of service to an area that does not meet the minimum forty (40) homes per mile density as

described above in paragraph (1), licensee shall be required to comply with such request only if the resident or developer agrees to pay to the licensee an amount equal to all incremental costs incurred beyond those for an extension otherwise involving forty (40) homes per mile, as described in paragraph (1);

(3) Regardless of whether licensee is requested to extend service, licensee shall install conduit in open trenches used by electric power and telephone companies in new single family subdivisions, as described in paragraph (1) above; and

(4) Absent a showing by licensee to the city manager of circumstances beyond licensee's reasonable control, an extension of service pursuant to paragraphs (1), (2) or (3) of this subsection shall be accomplished within one hundred fifty (150) days of the developer or resident's request.

(c) *Commercial service.* An incumbent cable operator licensee shall make cable services available to commercial establishments as follows except that licensee shall not be required to make service available to commercial establishments where the owner of the property has not granted licensee reasonable access to the property:

(1) When requested by the owner of a commercial establishment within the city, licensee shall extend cable services to any such owner's commercial establishment, provided that no plant extension and nothing more than a standard drop is required to make such cable services available;

(2) When the owner of a commercial establishment within the city requests an extension of service that does not meet the criteria described in paragraph (1) of this subsection, licensee shall be required to comply with such request only if such owner pays to licensee an amount equal to the reasonable actual labor and material costs incurred by licensee over and above the cost of a standard drop in making cable services available to such owner's commercial establishment; and

(3) Absent a showing by licensee to the city manager of unusual circumstances, including without limitation street crossings, an extension of service pursuant to paragraph (2) shall be accomplished within one hundred fifty (150) days after owner’s execution of any necessary easement documents.

(d) *Service drops.*

(1) When required by a license, licensee shall make service available to any single family residence or any commercial establishment within the city at the standard connection charge if the connection requires a standard drop;

(2) If making service available requires more than a standard drop, licensee shall not be required to make such service available unless the person or entity requesting such service pays to licensee, if requested by licensee (i) the standard connection charge and (ii) an amount equal to the reasonable actual labor and material costs incurred by licensee for the additional facilities and work;

(3) Licensee may offer bulk billing service, but shall not require a bulk billing agreement as a condition of providing service, if the person or entity requesting service pays to licensee the applicable amount(s) set forth in paragraphs (1) or (2) of this subsection;

(4) Under normal operating conditions, standard drops to a single-family residence or dwelling (including reconnects) will be installed within seven (7) business days after an order has been placed. Absent a showing by licensee to the city manager of unusual circumstances, including without limitation street crossings, any drop that is not a standard drop shall be accomplished within twenty (20) days of such request; and

(5) Absent a showing by licensee to the city manager of unusual circumstances, including without limitation street crossings (i) any standard drop to a commercial establishment shall be accomplished within twenty (20) days after the owner of such commercial establishment executes any necessary easement documents and capital contribution agreements, and (ii) any commercial drop that is not a standard drop shall be accomplished within thirty (30) days of the owner's execution of such documents and agreements.

(e) *Income-based discrimination prohibited.* When soliciting residential subscribers within any given defined geographic portion of the video service area, a licensee shall offer services to all potential residential subscribers in that portion of the service area under non-discriminatory rates and reasonable terms and conditions, provided, however, that the licensee shall not be required to provide video services to any subscriber who does not pay any applicable system extension connection fee or video service charge(s). Licensee shall not refuse to extend its video services system to any group of potential residential subscribers because of the income of the residents of the local area in which such group resides.

(f) *Annexed territory.* Newly annexed territory shall be subject to the terms of this chapter and specifically this section.
(Ord. No. 91.22, 10-17-91; Ord. No. 97.31, 5-29-97; Ord. No. 2007.39, 6-28-07; Ord. No. O2014.74, 12-4-14)

Sec. 10-38. Placement of transmission facilities.

Except as provided in the license, facilities shall be placed in accordance with chapter 25 of the Tempe City Code.
(Ord. No. 91.33, 10-17-91)

Sec. 10-39. Construction and technical standards.

(a) *Compliance with construction and technical standards.* As provided in the license, licensee shall construct, install, operate and maintain its video services system in a manner such that it operates at all times consistent with all laws, this chapter, construction standards of the city, the Federal Communications Commission (FCC) rules and regulations, part 76 sub-part K (technical standards), as amended from time to time (when applicable).

(b) *Additional specification.* Construction, installation and maintenance of a video services system shall be performed in an orderly and professional manner. All fiber, cables and wires shall be installed, where possible, parallel with and in a manner similar to the installation of electric and telephone lines. Multiple cable and fiber configurations shall be arranged in parallel and bundled with due respect for engineering considerations. Underground installations shall be in conformance with all applicable codes.

(c) Each video services system shall include equipment capable of providing standby power as specified in the license. The equipment shall be so constructed as to automatically revert to the standby mode when the electrical utility power returns. The system shall incorporate safeguards necessary to prevent injury to linemen resulting from licensee's standby power sources. Licensee shall at all times comply with applicable sections of:

(1) National Electrical Safety Code (ANSI) C2-1990 or latest version;

(2) National Electrical Code (National Bureau of Fire Underwriters) (latest version);

(3) The city building code (latest version);

(4) City subdivision regulations, all as from time to time amended and revised, and all other applicable rules and regulations now in effect or hereinafter adopted by the city;

(5) The Maricopa Association of Governments Uniform Standard Specifications and Details for Public Works Construction including the latest City of Tempe supplement thereto; and

(6) The City Of Tempe Utility Permit And Construction Manual (latest edition).

(d) In any event, the video services system shall not endanger or interfere with the safety of persons or property in the license area or other areas where the licensee may have equipment located.
(Ord. No. 91.33, 10-17-91; Ord. No. O2014.74, 12-4-14)

Sec. 10-40. Utility locating system.

A licensee shall be required to be a participant in the region one call utility locating system (Blue Stake).
(Ord. No. 91.33, 10-17-91)

Sec. 10-41. Resident notification of construction activity required.

The licensee shall provide reasonable advance notice as required by the license to all affected residents prior to system construction or upgrade crews entering their property; provided that the licensee shall not be required to provide such notice in emergencies or for normal system repair and maintenance work unless such work will involve excavation.
(Ord. No. 91.33, 10-17-91; Ord. No. O2014.74, 12-4-14)

Secs. 10-42—10-44. Reserved.

ARTICLE V. REGULATIONS PERTAINING TO USE OF CITY STREETS AND PUBLIC RIGHTS-OF-WAY

Sec. 10-45. Location of property of licensee.

(a) Any poles, wires, fiber optic or coaxial cable lines, conduits or other properties of a licensee to be constructed or installed in the streets or right-of-way shall be so constructed or installed only at such locations and in such manner as shall be approved by the city engineer acting in the exercise of his or her reasonable discretion.

(b) A licensee shall not install or erect any facility or apparatus in or on any privately owned area within the city which has not yet become a public street but is designated or delineated as a proposed public street on any tentative subdivision approved by the city, except as provided by the city.

(c) Unless otherwise provided in a license, all facilities of a licensee in any public street or in any public or private easement, and video services system lines to subscribers off the main lines, shall be located underground as per article VII of chapter 25 of the city code and at such depths and locations as shall be approved by the city engineer.

(d) Unless otherwise provided in a license, upon the undergrounding of other utility lines or shared overhead facilities, licensee shall concurrently (or earlier) place its facilities underground, at its own expense, at depths and locations approved by the city engineer.

(e) All new underground wires, fiber or cable of licensee placed after the effective date of the issuance of a license shall be placed in conduit or duct except for service drop lines.

(f) As required by the city engineer or other appropriate departments, the licensee or its authorized contractors will obtain permits, prior to any physical work being performed in the city's rights-of-way, or on city-owned property. All work will be done in accordance with the city's technical and permitting specifications. Upon request by the city engineer, a licensee shall provide maps of the applicable portion of the video services system route showing pedestal, amplifier and power supply locations to the city engineer prior to the issuance of a permit for construction.

(g) Where permitted by the property owner and of no cost to licensee, a licensee shall install its underground conduit simultaneously with telephone and electric facilities whenever the same are installed within the licensee's area.
(Ord. No. 91.33, 10-17-91; Ord. No. 2007.39, 6-28-07; Ord. No. O2014.74, 12-4-14)

Sec. 10-46. Emergency work.

The city reserves the right to move any portion of the licensee's equipment and facilities as may be required in any emergency as determined by the city without liability for interruption of video services. However, prior to taking any actions pursuant to this section, the city shall provide, if feasible, reasonable notice to licensee of the emergency to allow licensee the opportunity to protect or repair licensee's facilities involved in the emergency.
(Ord. No. 91.33, 10-17-91; Ord. No. O2014.74, 12-4-14)

Sec. 10-47. Removal and abandonment of property of licensee.

(a) In the event that the use of a substantial part of the video services system is discontinued for any reason for a continuous period of twelve (12) months, or in the event such video services system or property has been installed in any street or public place without complying with the requirements of the licensee's license or this chapter, or the license has been terminated, canceled or has expired without renewal, the licensee shall promptly, upon being given ten (10) days notice from the city engineer, remove from the streets or public places all such property and poles of such video services system other than any underground cable or fiber or any other underground property which the city engineer may permit to be abandoned in place. In the event of such removal, the licensee shall promptly restore the street or other area from which such property has been removed to a condition satisfactory to the city engineer.

(b) Any property of the licensee remaining in place one hundred eighty (180) days after the termination or expiration of the license shall be at the option of the city council considered permanently abandoned. The city council may extend such time.

(c) Any property of the licensee permitted to be abandoned in place shall be abandoned in such a manner as the city engineer shall prescribe. Upon permanent abandonment of the property of the licensee in place, the property shall become that of the city, and the licensee shall submit to the city an instrument in writing, to be approved by the city attorney, transferring to the city the ownership of such property.
(Ord. No. 91.33, 10-17-91; Ord. No. O2014.74, 12-4-14)

Sec. 10-48. Temporary removal of lines for building improvements.

The licensee, on the request of any person, firm or corporation holding a building moving permit issued by the city, shall temporarily raise or lower its cable or fiber lines to permit the moving of buildings. The expense of such temporary removal, raising or lowering of such lines shall be paid to the licensee by the person, firm or corporation requesting the same, and the licensee shall have the authority to require such payment in advance. The licensee shall be given not less than forty-eight (48) hours advance notice to arrange for such temporary line changes.
(Ord. No. 91.33, 10-17-91; Ord. No. O2014.74, 12-4-14)

Sec. 10-49. Changes required by public improvements.

The licensee shall from time to time protect, support, temporarily dislocate, temporarily or permanently as may be required, remove or relocate, without expense to the city, any facilities installed, used or maintained under the license, if and when made necessary by any lawful change of grade, alignment or width of any public street, by the city or any other governmental entity, or made necessary by any other public improvement or alteration in, under, on, upon or about any public street or other public property, whether such public improvement or alteration is at the instance of the city or another governmental entity, and whether such improvement or alteration is for a governmental or proprietary function, or made necessary by traffic conditions, public safety, street vacation or any other public project or purpose of city or any other governmental entity.
(Ord. No. 91.33, 10-17-91)

Sec. 10-50. Methods and materials of street construction.

The city shall have the right to specify the methods and materials of street construction, together with the horizontal and vertical location of any underground facility proposed by licensee within any public property or right-of-way. The city shall also have the right to limit the work of the licensee to assure a minimum of inconvenience to the traveling public.
(Ord. No. 91.33, 10-17-91)

Sec. 10-51. Failure to perform street work.

(a) In the event that a licensee during construction, installation or repair of its facilities causes damage to pavement, sidewalks, driveways, landscaping or other property, the licensee or the authorized agent shall, at its own expense and in a manner approved by the city, replace and restore such places to the same condition which existed before said work was commenced. The licensee shall further maintain all such restoration in the condition approved by the city for a minimum period of one year following such restoration.

(b) Upon failure of the licensee to complete any work required by law, or by the provisions of this chapter, or by its license agreement, to be done in any street or other public place, within ten (10) days following due notice and to the satisfaction of the city engineer, the city may, at its option, cause such work to be done and the licensee shall pay to the city the cost thereof in the itemized amounts reported by the city engineer to the licensee within ten (10) days after receipt of such itemized report. Or, at city's option, city may demand of licensee the estimated cost of such work as estimated by the city engineer, and such shall be paid by licensee to city within ten (10) days of such demand. Upon award of any contract or contracts therefor, licensee shall pay to city, within ten (10) days of demand, any additional amount necessary to provide for cost of such work. The time periods above may be modified by the license agreement. Upon completion of such work, licensee shall pay to city or city shall refund to licensee such sums so that the total received and retained by city shall equal the cost of such work. "Cost" as used herein shall include fifteen percent (15%) of other costs for city's overhead.
(Ord. No. 91.33, 10-17-91; Ord. No. O2014.74, 12-4-14)

Secs. 10-52—10-54. Reserved.

ARTICLE VI. CUSTOMER SERVICE PROVISIONS

Sec. 10-55. Local business office requirements.

(a) Unless otherwise exempted by the license, licensee shall maintain a business office for the purpose of receiving inquiries regarding new service, handling equipment, paying bills and receiving complaints.

(b) Said office shall be conveniently located in the city and shall be open during all normal business hours.
(Ord. No. 91.33, 10-17-91; Ord. No. O2014.74, 12-4-14)

Sec. 10-56. Efficient communications with subscribers.

Licensee shall have a publicly listed, local or toll-free telephone number, or website or other means of communicating with subscribers electronically to receive complaints, requests for repairs, service calls, billing inquiries and other subscriber information on a twenty-four (24) hour-per-day, seven (7) day-a-week basis.
(Ord. No. 91.33, 10-17-91; Ord. No. 97.31, 5-29-97; Ord. No. O2014.74, 12-4-14)

Sec. 10-57. Service standards.

(a) When applicable, a video services license shall include a provision that the city intends to impose and enforce the customer service obligations set forth by the FCC in 47 CFR subpart H § 76.309 (general and operating requirements) and 47 CFR subpart T § 76.1602, 76.1603 and 76.1619, as well as the requirements of section 624(d)(3) of the communications act, 47 U.S.C. § 544(d)(3) on the licensee as outlined in the license. If such standards are amended, a licensee subject to those standards under the license will be required to comply with the amended standards.

(b) In the event any licensee subject to subsection (a) above should violate any provision of this section, the city shall promptly give such licensee written notice of the violation. The licensee shall, within thirty (30) days of receipt of such written notice from the city:

(1) Respond to the city in writing, contesting the city's assertion of a violation and providing such information or documentation as may be necessary to support the licensee's position; or

(2) Cure such violation (and provide written notice of the same to the city); or, in the event that the nature of the violation is such that it cannot be cured within thirty (30) days, take reasonable steps to cure such violation and diligently continue such efforts until such violation is cured.

(c) In the event that a licensee contests the city's assertion of violation, fails to respond to the city's notice of violation, or fails to take reasonable steps to cure a violation which cannot be cured within thirty (30) days, the city may proceed with the imposition of liquidated damages in accordance with § 10-75 or § 10-76 of this chapter or any other appropriate remedy.
(Ord. No. 91.33, 10-17-91; Ord. No. O2014.74, 12-4-14)

Sec. 10-58. Response to subscriber complaints about service.

(a) Licensee shall promptly respond to subscriber complaints about service or service interruptions or outages and the license may set forth any subscriber complaint procedures.

(b) If a complaint to a licensee cannot be resolved to a subscriber's satisfaction, the city may consider individual cases brought to its attention and may exercise any authority the city may have to seek the information necessary to investigate the dispute and attempt to assist in a resolution.
(Ord. No. 91.33, 10-17-91; Ord. No. 97.31, 5-29-97; Ord. No. O2014.74, 12-4-14)

Sec. 10-59. Subscriber's right upon failure of service.

When required by the license, licensee shall maintain service call records on the time of call, nature of service call and any corrective action taken. These service call records shall be made available to the city manager, or a designee, upon request. A summary of service calls shall be prepared by the licensee and submitted in a form approved by the city and the licensee to the city manager, or a designee, upon request.
(Ord. No. 91.33, 10-17-91; Ord. No. 97.31, 5-29-97; Ord. No. O2014.74, 12-4-14)

Sec. 10-60. Subscriber solicitation procedures.

(a) All personnel and service vehicles of the licensee or its subcontractors contacting subscribers or potential subscribers outside the office of the licensee or performing any work within city right-of-way must be clearly identified as associated with licensee as set forth in the license.

(b) A cable operator licensee shall provide written or electronic information in easy-to-understand language on each of the following areas prior to or at the time of installation of service, at least annually to all subscribers and the city, and at any time upon request:

(1) Products and services offered;

(2) Prices and options for programming services and conditions of subscription to programming and other services and procedures for ordering changes in or termination of services;

(3) Installation and service maintenance policies;

(4) Instructions on how to use the cable service;

(5) Information on a parental control feature that will permit a subscriber to lock out any objectionable programming from the cable services entering his or her home;

(6) Channel positions of programming carried on the system; and

(7) Billing, collection and complaint procedures, including the address and telephone number of the city's designated office for handling cable television matters, and refund and credit policies.

(Ord. No. 91.33, 10-17-91; Ord. No. 97.31, 5-29-97; Ord. No. O2014.74, 12-4-14)

Sec. 10-61. Billing practices, information and procedures.

(a) When required by law, each subscriber of the cable television system will be given a three (3) day right of rescission for ordering the service of the cable television system provided that such right of rescission shall end upon initiation of physical installation of cable television system equipment on such subscriber's premises.

(b) Billing procedures for a licensee subject to 47 CFR §§ 76.1602, 76.1619 and 76.309 shall be as follows:

(1) Licensee shall bill all subscribers to its cable television system in a uniform, nondiscriminatory manner, regardless of subscriber's level of service. In no case shall any subscriber be billed for services more than thirty (30) days prior to receipt of such service. Payment shall be due no sooner than the fifteenth day of each billing period unless the subscriber agrees otherwise, and the due date shall be listed on each bill.

(2) Licensee shall provide all subscribers with an itemized monthly bill that contains, at a minimum, the following information:

a. A list of each service or package or equipment received for that billing period;

b. The rate or charge for each service or package or equipment received;

c. The period of time over which said services are billed;

d. The total charges due for the monthly period, separate from any previous balance due;

e. A specific date by which payment is required before a late charge is imposed;

f. Any surcharge for underground conversion of aerial plant costs;

g. Any optional charges, rebates and credits.

(3) Late charges, if applied, shall in no case exceed amounts allowed by applicable law, and shall in no case be imposed until the thirty (30) day billing period has elapsed;

(4) In case of a subscriber dispute, the licensee must respond to a written or electronic complaint from a subscriber within thirty (30) days. The licensee

shall follow a written internal appeal procedure for resolution of subscriber disputes;

(5) Refund checks will be issued promptly, but no later than either:

a. The subscriber's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier; or

b. The return of the equipment supplied by the licensee if service is terminated.

(6) Credits for service will be issued no later than the subscriber's next billing cycle following the determination that a credit is warranted.

(Ord. No. 91.33, 10-17-91; Ord. No. 97.31, 5-29-97; Ord. No. O2014.74, 12-4-14)

Sec. 10-62. Disconnection and termination of cable services.

Licensee shall only disconnect or terminate a subscriber's cable service for good and just cause. In no event shall licensee disconnect said cable service for nonpayment without the prior written notification to the affected subscriber at least seven (7) days prior to such disconnection or termination. In no event shall such disconnection or termination for nonpayment occur in less than thirty (30) days after a subscriber's failure to pay a bill due. Where the licensee has improperly discontinued cable system service to any such subscriber, it shall provide free reconnection to the cable system to such subscriber.

(Ord. No. 91.33, 10-17-91)

Sec. 10-63. A/B switch.

Consistent with current federal law and when needed, the cable operator licensee may make available to subscribers the optional installation of a cable/antenna ("A/B") switch.

(Ord. No. 91.33, 10-17-91; Ord. No. 2007.39, 6-28-07; Ord. No. O2014.74, 12-4-14)

Sec. 10-64. City and subscriber notification required.

Unless otherwise provided by the license, subscribers and the city will be notified of any changes in rates, programming, services or channel positions as soon as possible either in writing or electronically. Notice must be given to the city and subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the licensee, unless the city concurs that notice is not necessary. In addition, the licensee shall notify the city and subscribers thirty (30) days in advance of any significant changes in the other information required by this section.

(Ord. No. 91.33, 10-17-91; Ord. No. 97.31, 5-29-97; Ord. No. O2014.74, 12-4-14)

Sec. 10-65. Rights of individuals.

(a) A licensee shall not deny video service, deny access or otherwise discriminate against subscribers, channel users or general citizens on the basis of race, color, gender, gender identity, sexual orientation, religion, national origin, familial status, age or disability or United States

military veteran status and shall comply at all times with all other applicable federal, state and local laws and regulations, as amended from time to time, relating to nondiscrimination.

(b) A licensee shall strictly adhere to applicable equal employment opportunity requirements of federal, state and local regulations, and as amended from time to time.
(Ord. No. 91.33, 10-17-91; Ord. No. O2014.74, 12-4-14)

Sec. 10-66. Protection of subscriber privacy.

Licensee shall comply with applicable federal, state and local laws regarding subscriber privacy. At the time of entering into an agreement to provide any video service or other service to a subscriber, a licensee shall make available to subscribers a privacy policy discussing its practices with regard to the video services.
(Ord. No. 91.33, 10-17-91; Ord. No. O2014.74, 12-4-14)

Secs. 10-67—10-69. Reserved.

ARTICLE VII. ADMINISTRATION AND ENFORCEMENT

Sec. 10-70. Reports.

(a) If required by the license and when requested by the city manager, the licensee shall provide a briefing no later than one hundred twenty (120) days after the end of the licensee's fiscal year that includes a description of all major activities applicable to its operation during the preceding twelve (12) month period. When required by the license, licensee shall submit a written or electronic report that may include the following information, specific to the city: number of homes passed, number of video services system plant linear feet or miles, number of subscribers for each type of video service offered and the gross revenues from each source attributable to the operations of licensee from within the city. This report shall be certified as being correct by an officer of the company. There shall be submitted along with this report such other information reasonably related to license compliance as the city shall reasonably request.

(b) Upon request, there shall be provided to the city, copies of any communications and reports submitted by licensee to the Federal Communications Commission or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting construction or operation of a video services system in the city.

(c) Licensee shall provide the city with regular reports, as needed, to establish licensee's compliance with the various standards and other provisions of this chapter.
(Ord. No. 91.33, 10-17-91; Ord. No. O2014.74, 12-4-14)

Sec. 10-71. Inspection of property and records.

(a) At all reasonable times, the licensee shall permit any duly authorized representative of the city to examine financial documentation requested by the city for review, and to examine and transcribe any and all maps and other records kept or maintained by the licensee or under its control which relate to license compliance.

(b) The licensee shall file with the city engineer, upon request, current maps or sets of maps drawn to scale, showing the location of all video services system facilities and equipment installed and in place in streets, public rights-of-way and other public places of the city.

(c) The licensee shall keep on file with the city manager a current annual report as specified in the license.
(Ord. No. 91.33, 10-17-91; Ord. No. O2014.74, 12-4-14)

Sec. 10-72. Protection of city against liability.

(a) *Indemnification.*

(1) Licensee shall fully indemnify, defend and hold harmless the city, its officers, boards, commissions, elected officials, agents, attorneys, representatives and employees for, from and against any and all liability for costs, damages, penalties, claims, charges, losses and expenses (including but not limited to, expenses for reasonable attorney and other legal fees and court costs, whether suit be brought or not) arising from:

a. Personal injury or property damage that may be imposed upon, incurred by or be asserted against city by reason of any acts or omissions of licensee, its personnel, agents, employees, contractors, subcontractors or affiliates, arising out of or in any way connected with the construction, installation, operation, maintenance or condition of the video services system;

b. Any and all claims arising out of licensee's failure to comply with the provisions of this chapter or a license or any federal, state or local law, or regulation applicable to licensee or the video services system; or

c. Any and all disputes arising out of a claim by any party other than city or licensee wherein damages or other relief is sought (i) as a result of the city's issuing a license to licensee or (ii) as a result of the renewal or non-renewal of licensee's license.

(2) If a lawsuit covered by the provisions of paragraph (1) of this subsection be brought against city, either independently or jointly with licensee, or with any other person or municipality, licensee, upon notice given by city, shall defend city at the cost of licensee. If final judgment is obtained against city, either independently or jointly with licensee or any other defendants, licensee shall indemnify city and pay such judgment with all costs and satisfy and discharge the same.

(3) City shall cooperate with the licensee and reserves the right to participate in the defense of any litigation.

(4) The city is in no manner or means waiving any governmental immunity it may enjoy or any immunity for its agents, officials, attorneys, representatives or employees.

(5) A licensee shall make no settlement in any matter identified above without the city's written consent, which shall not be unreasonably withheld. Failure to inform the city of settlement shall constitute a breach of the license and the city may seek any redress available to it against the licensee whether set forth in this chapter or under any other municipal, state or federal laws.

(6) All rights of city, pursuant to indemnification, insurance, letter of credit or performance bond(s), as provided for by this chapter, are in addition to all other rights the city may have under this chapter or any other chapter, rule, regulation or law.

(7) The city's exercise of or failure to exercise all rights pursuant to any section of this chapter shall not affect in any way the right of city subsequently to exercise any such rights or any other right of city under this chapter or any other chapter, rule, regulation or law.

(8) It is the purpose of this subsection to provide maximum indemnification to the city under the terms and conditions expressed and, in the event of a dispute, this

section shall be construed (to the greatest extent permitted by law) to provide for the indemnification of the city by the licensee.

(9) The provisions of this subsection shall not be dependent or conditioned upon the validity of this chapter or the validity of any of the procedures or agreements involved in the award or renewal of a license, but shall be and remain a binding right and obligation of the city and licensee even if part or all of this chapter, or the grant or renewal of a license, is declared null and void in a legal or administrative proceeding. It shall be expressly stated in a license, that it is the intent of the licensee and city, upon the effective date of the license, that the provisions of this subsection survive any such declaration and shall be a binding obligation of and inure to the benefit of the licensee and city and their respective successors and assigns, if any.

(b) *Required insurance.*

(1) Licensee shall, at its own cost and expense, procure and maintain for the mutual benefit of the city and the licensee and for the duration of the license, insurance against claims for i) bodily injury, sickness or disease, or death of any person other than licensee's employees; ii) damages insured by usual personal and advertising injury liability coverage; iii) damages because of injury to or destruction of tangible property, including loss of use resulting from; iv) products/completed operations; and v) damages involving contractual liability insurance applicable to licensee's indemnity obligations under the license. Such insurance shall cover claims as may be occasioned by the operations, act, omission or negligence of licensee or its officers, agents, representatives, employees or contractors during all times the license is in effect and the facilities are in the right-of-way or on public property. Insurance limits are inclusive of umbrella coverage.

(2) Licensee's policies shall be issued by a company authorized to do business in Arizona and having a rating acceptable to the city's risk manager.

(3) Licensee shall maintain the following types of insurance policies.

a. Commercial general liability of not less than five million dollars ($5,000,000) for each occurrence. The general aggregate limit shall be twice the required occurrence limit.

b. Worker's compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over licensee's employees engaged in the performance of work or services pursuant to the license in an amount acceptable to the city's risk manager as set forth in the license.

c. Employer's liability insurance for bodily injury by accident and disease and the disease policy limit in the amounts acceptable to the city's risk manager as set forth in the license.

d. Commercial automobile liability insurance with a combined single limit for bodily injury and property damage of not less than five million dollars ($5,000,000.00) per occurrence or such other amount approved by the city's risk manager as set forth in the license with respect to any owned, hired, and non-owned vehicles assigned to or used in performance of the licensee's work.

(4) The policy or policies (except worker's compensation) shall name the city, its officers, boards, commissions, agents and employees as additional insured(s) and such endorsement shall be provided to the city's risk manager and shall include coverage for licensee's completed operations and products. The insurance policies shall contain a waiver of transfer rights of recovery (subrogation) against city, its agents, representatives, officers, directors, officials and employees. Licensee shall provide at least thirty (30) days advance written notice of any cancellation, modification or reduction in coverage of said policy(ies). No license granted under this chapter shall be effective unless and until each of the foregoing policies of insurance as required in this subsection has been delivered to the city's risk manager. Any substitute policy or policies shall be subject to the same approvals and shall comply with all of the provisions of this subsection.

(5) The city's risk manager may require increases in the amount or types of coverage no more frequently than every three (3) years, so as to ensure full protection of the city and the public. The licensee shall have sixty (60) days from the date of notification from the city's risk manager to comply with any increase.

(6) Upon notice to the city, licensee may self-insure the above required coverages if licensee or its parent is of sufficient financial standing to reasonably provide such insurance.

(7) Licensee shall include all contractors and subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each as may be required by the license. All coverage amounts for contractors and subcontractors shall be set forth in the license.

(8) A certificate of insurance and the endorsement listing the city as an additional insured shall be provided within ten (10) business days of the effective date of the license.

(Ord. No. 91.33, 10-17-91; Ord. No. 2007.39, 6-28-07; Ord. No. O2014.74, 12-4-14)

Sec. 10-73. Letter of credit.

(a) Within 30 days after the execution of the license, a licensee shall deposit with the city an irrevocable unconditional letter of credit issued by a federally insured commercial lending institution in the amount of thirty thousand dollars ($30,000.00) or such other amount as may be specified in the license. Licensee shall maintain such letter of credit for the entire term of the license. The form and substance of said letter of credit shall be used to assure the faithful performance by a licensee of all provisions of the resulting license; and compliance with all

orders, permits and directions of any agency, commission, board, department, division or office of the city having jurisdiction over its acts of defaults under a license and the payment by the licensee of any penalties, liquidated damages, claims, liens and taxes due to the city which arise by reason of the construction, operation or maintenance of the video services system, including cost of removal or abandonment of any property of the licensee.

(b) The letter of credit shall be structured in such a manner so that if the city at any time draws upon the letter of credit, upon notice to the licensee by the issuing lending institution, licensee shall increase immediately the amount of available credit to the extent necessary to replenish that portion of the available credit exhausted by the honoring of the city's draft. The lending institution shall notify the city of the replenishment by licensee. The intent of this subsection is to make available to the city at all times a letter of credit in the amount determined by the city.

(c) The rights reserved to the city with respect to the letter of credit are in addition to all other rights of the city, whether reserved by a license or authorized by law, and no action proceeding against a letter of credit shall affect any other right the city may have.
(Ord. No. 91.33, 10-17-91; Ord. No. 2007.39, 6-28-07; Ord. No. O2014.74, 12-4-14)

Sec. 10-74. Construction bond.

(a) Prior to receiving any permit to construct a video services system or to reconstruct or rebuild an existing system on public property or in the right-of-way, a licensee shall obtain and maintain until either completion of the construction/reconstruction or throughout the term of the license as set forth in the license, at licensee’s cost and expense, a faithful performance bond issued by a company authorized to do business in the State of Arizona, and found acceptable by the city attorney, in an amount established in the license agreement for the purpose of guaranteeing the timely construction or reconstruction of the system and the safeguarding of private property during construction or reconstruction. The bond shall provide, but not be limited to, the following condition: There shall be recoverable by the city, jointly and severally from the principal and surety, any and all damages, losses or costs suffered by the city resulting from the failure of a licensee to satisfactorily complete construction or reconstruction of its system throughout the license area pursuant to the terms and conditions of this chapter and such licensee's license.

(b) The bond shall be terminated only after the city manager or designee finds that a licensee has satisfactorily completed initial construction and any necessary activation or reconstruction of its video services system pursuant to the terms and conditions of this chapter and such licensee's license.

(c) The rights reserved to the city with respect to the bond are in addition to all other rights of the city, whether reserved by this chapter or authorized by law, and no action, proceeding or exercise of a right with respect to such bond shall affect any other rights the city may have.

(d) The bond shall contain the following endorsement: It is hereby understood and agreed that this bond may not be terminated or otherwise allowed to expire without thirty (30) days prior written notice to the city.
(Ord. No. 91.33, 10-17-91; Ord. No. 2007.39, 6-28-07; Ord. No. O2014.74, 12-4-14)

Sec. 10-75. Liquidated damages.

(a) Unless other remedies are provided by a license, each license granted by the city shall state that a licensee understands and shall agree that failure to comply with any time and performance requirements as stipulated in this chapter and the license will result in damage to the city, and that it is and will be impracticable to determine the actual amount of such damage in the event of delay or nonperformance; the license may include provisions for liquidated damages to be paid by the licensee, in amounts set forth in the license and chargeable to the letter of credit for the following concerns:

(1) Failure to provide any required cable connection within the time(s) set forth in § 10-37.

(2) Failure to properly restore the public right-of-way or to correct related violations of specifications, code or standards after having been notified by the city to correct such defects.

(3) Failure to comply with the applicable requirements of article VI of this chapter following notice and an opportunity to cure.

(4) Failure to provide in a continuing manner the services required by the license, unless the city council specifically approves modifications of licensee’s obligation.

(5) Failure to provide in a continuing manner the services required by the license, unless the city council specifically approves modification of licensee's obligation;

(6) Any other action or non-action by the licensee, as agreed upon between the city and licensee, and set forth in the license.

(b) If the city manager or designee concludes that a licensee is in fact liable for liquidated damages pursuant to this section, he/she shall issue to licensee electronically and by certified mail a notice of the liquidated damages. The notice shall set forth the nature of the violation and the amount of the proposed assessment. The licensee shall, within thirty (30) days of receipt of such notice:

(1) Respond to the city in writing, contesting the city's assessment and providing such information or documentation as may be necessary to support licensee's position; or

(2) Cure any such violation (and provide written evidence of the same) or, in the event that, by the nature of the violation, such violation cannot be cured within such thirty (30) day period, take reasonable steps to cure said violation and diligently continue such efforts until said violation is cured. Licensee shall report to the city, in writing, at thirty (30) day intervals as to licensee's efforts, indicating the steps taken by licensee to cure said violation and reporting licensee's progress until such violation is cured.

(c) In the event that the licensee contests the city's assessment or fails to respond to the city's notice imposing liquidated damages, within fifteen (15) days the city shall schedule a hearing in accordance with the procedures set forth in § 10-76.
(Ord. No. 91.33, 10-17-91; Ord. No. O2014.74, 12-4-14)

Sec. 10-76. Administrative hearing.

(a) Within fifteen (15) days of (i) receipt of notice of contest pursuant to § 10-57(b)(1) or (ii) expiration of the response time referred to in § 10-57(c) or 10-75(c), an administrative hearing shall be scheduled by the city manager or designee. This shall be a public hearing, and licensee shall be afforded full due process, including, without limitation, an opportunity to be heard, to present evidence and to cross examine witnesses. Within fifteen (15) days after the conclusion of such hearing, the city manager or designee shall issue a determination. In that determination the city manager or designee may:

(1) Find that licensee is not in violation of the terms of the license;

(2) Find that the licensee is in violation, but that such violation was with just cause and waive any liquidated damages that might otherwise be imposed;

(3) Find that licensee is in violation of the terms of the license, take corrective action and foreclose on all or any appropriate part of the letter of credit provided pursuant to § 10-73;

(4) Find that licensee is in violation of the terms of the license and impose liquidated damages; or

(5) In the case of a material violation recommend that the city council terminate the license, provided that the city council may take action on any such recommendation only after a public hearing as set forth in § 10-77.

(b) If the city manager or designee determines that licensee has committed a violation, the determination shall be accompanied by a detailed statement of reasons for the determination, including findings of fact.

(c) The decision of the city manager or designee shall become final unless licensee requests a public hearing before the city council within fifteen (15) days of its receipt of the statement of reasons and findings of fact by the city manager or designee.
(Ord. No. 91.33, 10-17-91; Ord. No. O2014.74, 12-4-14)

Sec. 10-77. Hearing by city council.

If a public hearing before the city council is requested by licensee or is held pursuant to § 10-76(a)(5) or § 10-76(c), it shall be de novo and it shall convene within thirty (30) days of the request therefor. All witnesses shall be sworn and shall be subject to cross-examination; however, formal rules of evidence shall not apply. The city council's decision, which shall include findings of fact, shall be made not later than forty-five (45) calendar days after the conclusion of the hearing. In that decision, the city council may:

(1) Find that licensee is not in violation of the terms of the license;

(2) Find that licensee is in violation but that such violation was with just cause and waive any liquidated damages or penalty that may otherwise be imposed;

(3) Find that licensee is in violation of the terms of the license, take corrective action and foreclose on all or any appropriate part of the letter of credit provided pursuant to § 10-73 to pay the cost thereof;

(4) Find that licensee is in violation of the terms of the license and impose liquidated damages; or

(5) In the case of a material violation of the license within the meaning of § 10-78, declare the licensee in violation and revoke the license.

(Ord. No. 91.33, 10-17-91)

Sec. 10-78. Revocation.

(a) In addition to all other rights and powers retained by the city council under this chapter or otherwise, the council shall have the right to revoke the license and all rights and privileges of the licensee thereunder in the event of a recurring or protracted substantial breach of the license terms and conditions, or this chapter, which substantially affects the provision or quality of video services, the ability of the city to effectively regulate the licensee, or Tempe's collection of all fees and charges. The power of revocation shall not be used if the breach is a result of force majeure. The breaches appearing on the list set forth below in this section shall be considered substantial breaches. The list is not exhaustive:

(1) Willful or grossly negligent repeated violations of this chapter, the license or the representations made in the application process, or any rule, order or regulation of the city made pursuant to this chapter;

(2) Attempt to evade any material provision of the license or practice any fraud or deceit upon the city or its subscribers or customers;

(3) Failure to begin video services system construction, as provided under the license;

(4) Failure to provide the video services required by the license;

(5) Insolvency of the licensee or the licensee’s filing for bankruptcy;

(6) Unlawful acts or omissions by licensee or its officials, agents, representatives or employees, which result in the city's refusal to award a license to any other person.

(b) *Notice.* Before proceeding with a revocation hearing, the city manager or a designee shall make a written demand that the licensee comply. If a violation by the licensee continues for a period beyond that set forth in the written demand without written proof that the corrective

action has been taken or is being actively and expeditiously pursued, the city council may revoke the license as provided in § 10-78.
(Ord. No. 91.33, 10-17-91; Ord. No. O2014.74, 12-4-14)

Sec. 10-79. Performance feedback sessions.

(a) The city and a licensee may hold scheduled performance feedback sessions every three (3) years from the anniversary date of a licensee's award of the license and as may be required by federal and state law.

(b) These feedback sessions shall be open to the public and announced either in a newspaper of general circulation in accordance with legal notice or through the city's website or other electronic means.

(c) Topics which may be discussed at any scheduled or special feedback session may include, but not be limited to service rate structures; license fees; liquidated damages; free or discounted services; application of new technologies; system performance; services provided; programming offered; customer complaints; privacy; amendments to this chapter; judicial and FCC rulings; line extension policies; and licensee or city rules.
(Ord. No. 91.33, 10-17-91; Ord. No. 2007.39, 6-28-07; Ord. No. O2014.74, 12-4-14)

Sec. 10-80. Continuity of service mandatory.

(a) It shall be the right of all subscribers to continue receiving video service insofar as their financial and other obligations to a licensee are honored.

(b) In the event of the termination of the license, the licensee shall cooperate with the city, to ensure continuity of video service to all subscribers for a period not to exceed ninety (90) days. Said period may be extended by mutual agreement between the city and licensee. During such period, licensee shall be entitled to the revenues for any period during which it operates the video services system.
(Ord. No. 91.33, 10-17-91; Ord. No. O2014.74, 12-4-14)

Sec. 10-81. Failure of city to enforce a license; no waiver of the terms thereof.

A licensee shall not be excused from complying with any of the terms and conditions of a license or this chapter by any failure of the city upon any one or more occasions to insist upon or to seek compliance with any such terms or conditions.
(Ord. No. 91.33, 10-17-91)

Sec. 10-82. Waivers.

(a) Any provision of this chapter may be waived, at the sole discretion of the city, by resolution of the city council.

(b) Licensee may submit a request for waiver to the city council at any time during the application process or license term. Such request for waiver may, at the sole discretion of the city council, be set for public hearing and a decision shall be made within one hundred twenty (120) days following its submission.

(c) The city council may authorize the economic, technical or legal evaluation of such licensee's waiver request and the licensee shall be required to reimburse the city for all expenditures incurred by city in connection with such evaluation.

(d) This section is enacted solely for the convenience and benefit of the city and shall not be construed in such a manner as to create any right or entitlement for the licensee.
(Ord. No. 91.33, 10-17-91; Ord. No. O2014.74, 12-4-14)

Sec. 10-83. Validity of license.

Licensee shall acknowledge as a condition of execution of a license, that licensee was represented throughout the negotiations of any license award or renewal by its own attorneys and had opportunity to consult with its own attorneys about its rights and obligations regarding the license.
(Ord. No. 91.33, 10-17-91; Ord. No. 2007.39, 6-28-07)

Sec. 10-84. Miscellaneous provisions.

(a) When not otherwise prescribed herein, all matters herein required to be filed with the city shall be filed with the office of the city manager.

(b) All notices which city may give to a licensee or which a licensee may give to city shall be given in writing and may be given by first class mail, postage prepaid addressed to licensee's most recent address on file with the city, and addressed to city at its city hall. Such notices, when sent by mail, shall be deemed given one day after deposit in the U.S. mail.
(Ord. No. 91.33, 10-17-91; Ord. No. O2014.74, 12-4-14)

Sec. 10-85. Force majeure.

With respect to any provision of this chapter or any license granted pursuant thereto, the violation or noncompliance with which could result in the imposition of a financial penalty, liquidated damages, forfeiture or other sanction upon a licensee, such violation or noncompliance shall be excused where such violation or noncompliance is the result of acts of God, war, civil disturbance, strike or other labor unrest, or similar events, the occurrence of which was not reasonably foreseeable by licensee and is beyond its reasonable control.
(Ord. No. 91.33, 10-17-91)

Sec. 10-86. Repealed.
(Ord. No. 91.33, 10-17-91; Ord. No. 2007.39, 6-28-07)

Sec. 10-87. Remedies for violations

(a) *Cease and desist orders.* When the city manager or designee finds that a person has violated, or continues to violate, any provision of these articles or any related laws or regulations, or that the past violations are likely to recur, the city manager or designee may issue an order directing the person to cease and desist all such violations and direct immediate compliance with all requirements and the taking of such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation.

(1) Issuance of a cease and desist order shall not be a bar against, or a prerequisite for, taking any other action against the person.

(2) A person's failure to comply with an order of the city manager or designee issued pursuant to this section shall constitute a violation of this article.

(b) *Injunctive relief.* When the city manager or designee finds that a licensee or a non-licensed person has violated, or continues to violate, any provision of these articles or any related laws or regulations, or that the past violations are likely to recur, the city may petition the superior court of Arizona, Maricopa County, through the city attorney for the issuance of a temporary or permanent injunction, as appropriate, which restrains or compels the specific performance of any order or requirement imposed by these articles on the activities of the licensee or non-licensed person. The city may also seek such other action as is appropriate for legal or equitable relief.
(Ord. No. O2014.74, 12-4-14)

Chapter 11

DESIGN REVIEW[1]

ARTICLE I. DESIGN REVIEW[2]

Sec. 11-1. Repealed.
(Ord. No. 86.52, § 1, 7-24-86; Ord. No. 2004.42, 1-20-05)

Sec. 11-2. Repealed.
(Ord. No. 86.52, § 1, 7-24-86 ; Ord. No. 2004.42, 1-20-05)

Sec. 11-3. Repealed.
(Ord. No. 86.52, § 1, 7-24-86; Ord. No. 2004.42, 1-20-05)

Sec. 11-4. Repealed.
(Ord. No. 86.52, § 1, 7-24-86; Ord. No. 97.20, 4-10-97; 98.05, 2-12-98; Ord. No. 2004.42, 1-20-05)

Sec. 11-5. Repealed.
(Ord. No. 86.52, § 1, 7-24-86; Ord. No. 97.20, 4-10-97; Ord. No. 2001.17, 7-26-01; Ord. No. 2004.42, 1-20-05)

Sec. 11-6. Repealed.
(Ord. No. 86.52, § 1, 7-24-86; Ord. No. 97.65, 11-20-97; Ord. No. 2003.37, 1-15-04; Ord. No. 2004.42, 1-20-05)

Sec. 11-7. Repealed.
(Ord. No. 86.52, § 1, 7-24-86; Ord. No. 94.17, 6-9-94; Ord. No. 97.20, 4-10-97; Ord. No. 97.52, 10-9-97; Ord. No. 2001.17, 7-26-01; Ord. No. 2004.42, 1-20-05)

Sec. 11-8. Repealed.
(Ord. No. 86.52, § 1, 7-24-86; Ord. No. 2004.42, 1-20-05)

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[1]**Editor's note**—Ord. No. 86.52, § 1, enacted July 24, 1986, amended Ch. 11, Design Review, in its entirety to read as herein set out. The substantive provisions of former Ch. 11, §§ 11-1—11-8, were derived from Code 1967, §§ 10A-1, 10A-1.1, 10A-2—10A-7; Ord. No. 663.9, § 1, adopted Sept. 27, 1984; and Ord. No. 86.10, § 1, adopted Feb. 27, 1986.

Cross references—Buildings and building regulations, Ch. 8.

Zoning and Development Code reference—Development review commission, Section 1-312

[2]**Editor's note**—Ord. No. 2004.42 repealed the Design Review Board from the City Code and it has been incorporated into the Zoning and Development Code. See Development Review Commission, Section 1-312 of the Zoning and Development Code.

Sec. 11-9. Repealed
(Ord. No. 86.52, § 1, 7-24-86; Ord. No. 2004.42, 1-20-05)

Secs. 11-10—11-15. Reserved.

ARTICLE II. CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN[3]

Sec. 11-16. Repealed.
(Ord. No. 97.65, 11-20-97; Ord. No. 2004.42, 1-20-05)

Sec. 11-17. Repealed.
(Ord. No. 97.65, 11-20-97; Ord. No. 2004.42, 1-20-05)

Sec. 11-18. Repealed.
(Ord. No. 97.65, 11-20-97; Ord. No. 2004.42, 1-20-05)

Sec. 11-19. Repealed.
(Ord. No. 97.65, 11-20-97; Ord. No. 2004.42, 1-20-05)

Secs. 11-23—11-29. Reserved.

[3]**Editor's note**—Ord. No. 2004.42 repealed Crime Prevention Through Environmental Design from the City Code and it has been incorporated into the Zoning and Development Code.

ARTICLE III. SECURITY PLANS[4]

Sec. 11-30. Repealed.
(Ord. No. 97.65, 11-20-97; Ord. No. 2004.42, 1-20-05)

[4]**Editor's note**—Ord. No. 2004.42 repealed § 11-30 and moved it to new § 26-70.

Chapter 12

DRAINAGE AND FLOOD CONTROL[1]

ARTICLE I. IN GENERAL

Secs. 12-1—12-15. Reserved.

ARTICLE II. FLOODPLAIN MANAGEMENT[2]

Sec. 12-16. Purpose.

(a) The flood hazard areas of Tempe are subject to periodic inundation which can result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.

(b) These flood losses may be caused by the cumulative effect of obstructions in areas of special flood hazards which increase flood heights and velocities, and, when inadequately anchored, cause damage in other areas. Uses that are inadequately floodproofed, elevated or otherwise protected from flood damage also contribute to the flood loss.

(c) It is the purpose of this article to promote the public health, safety and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed:

(1) To protect human life and health;

(2) To minimize expenditure of public money for costly flood-control projects;

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[1] **Cross references**—Buildings and building regulations, Ch. 8; Planning and development, Ch. 25.
State law reference—Authority to provide for floodplain regulations, A.R.S. §§ 45-2349, 45-2350.

[2] **Editors note—**Ord. No. 87.25, adopted Sept. 10, 1987, Ch. 12, Art. II, floodplain management, in its entirety to read as herein set out. The substantive provisions of former Art. II, §§ 12-16—12-22, were derived from Code 1967, §§ 15-1—15-7; and Ord. No. 828.3, §§ I—VI, adopted Sept. 27, 1984.

(3) To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

(4) To minimize prolonged business interruptions;

(5) To minimize damage to public facilities and utilities, such as water and gas mains, electric, telephone and sewer lines, and streets and bridges, located in areas of special flood hazard;

(6) To help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize blight areas caused by flooding;

(7) To ensure that potential buyers are notified that property is in an area of special flood hazard;

(8) To ensure that those who occupy the areas of special flood hazard assume responsibility for their actions; and

(9) To maintain eligibility for disaster relief.

(Ord. No. 87.25, 9-10-87; Ord. No. 2013.52, 10-3-13)

Sec. 12-17. Methods of reducing flood losses.

(a) In order to accomplish its purposes, this article includes methods and provisions for:

(1) Restricting or prohibiting uses which are dangerous to health, safety and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;

(2) Requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;

(3) Controlling the alteration of natural floodplains, stream channels and natural protective barriers, which help accommodate or channel floodwaters;

(4) Controlling filling, grading, dredging and other development which may increase flood damage; and

(5) Preventing or regulating the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards in other areas.

(b) This article takes precedence over any less restrictive, conflicting local laws, ordinances and codes.

(Ord. No. 87.25, 9-10-87; Ord. No. 2013.52, 10-3-13)

Sec. 12-18. Definitions.

Unless specifically defined below, words or phrases used in this article shall be interpreted so as to give them the meaning they have in common usage and to give this article its most reasonable application:

Accessory structure means a structure that is: (i) solely used for the parking of no more than two cars or limited storage (small, low cost sheds); and (ii) no more than four hundred (400) square feet in floor area.

Appeal means a request for a review of the floodplain administrator's interpretation of any provision of this article.

Area of shallow flooding means a designated AO or AH Zone on Tempe's flood insurance rate map (FIRM) with a one percent or greater annual chance of flooding to an average depth of one to three (3) feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

Base flood or 100-year flood means a flood having a one percent chance of being equaled or exceeded in any given year.

Base flood elevation or BFE means the elevation shown on the flood insurance rate map for Zones AE, AH, A1-30, VE, and V1-V30 that indicates the water surface elevation resulting from a flood that has a one percent or greater chance of being equaled or exceeded in any given year.

B*asement* means any area of the building having its floor subgrade (below ground level) on all sides.

Development means any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

FEMA means the Federal Emergency Management Agency.

Flood or flooding means a general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of flood water; the unusual and rapid accumulation or runoff of surface waters from any source; or the collapse or subsidence of land along the shore of a body of water as a result of an unanticipated force of nature, such as flash flood, or by some similarly unusual and unforeseeable event which results in flooding as defined in this definition.

Flood boundary and floodway map or FBFM means the official map on which FEMA or the Federal Insurance Administration has delineated both the areas of Special flood hazards and the floodway.

Flood insurance rate map (FIRM) means the official map on which FEMA or the Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to Tempe.

Flood insurance study means the official report provided by FEMA that includes flood profiles, the FIRM, the flood boundary and floodway maps, and the water surface elevation of the base flood.

Floodplain or *flood-prone area* means any land area susceptible to being inundated by water from any source (see definition of "Flooding").

Floodplain administrator means the city engineer of the city who is hereby authorized by the floodplain board to administer the provisions of this article.

Floodplain board means the city council of the city at such times as they are engaged in the enforcement of this article.

Floodplain management means the operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including, but not limited to, emergency preparedness plans, flood-control works and floodplain management regulations.

Floodplain management regulations means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as floodplain ordinances, grading ordinances and erosion control ordinances) and other applications of police power. The term describes such federal, state or local regulations in any combination thereof which provide standards for the purpose of flood damage prevention and reduction.

Flood proofing means any combination of structural and nonstructural additions, changes or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

Flood-related erosion means the collapse or subsidence of land along a body of water as a result of an unanticipated force of nature, such as a flash flood, or by some similarly unusual and unforeseeable event which results in flooding.

Floodway or regulatory floodway means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the 100-year flood without cumulatively increasing the water surface elevation more than a designated height.

Functionally dependent use means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

Highest adjacent grade means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

Historic structure means a structure listed on the National Register of Historic Places or in a state or local inventory of historic places.

Lowest floor means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area is not considered a building's lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirements of this article.

Manufactured home means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include a "recreational vehicle".

Manufactured home park or subdivision means a parcel (or contiguous parcels) of land divided into two (2) or more manufactured home lots for sale or rent.

Mean sea level means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum (NAVD) of 1988, or other datum to which base flood elevations shown on a Tempe's FIRM are referenced.

New construction means, for the purposes of determining insurance rates, structures for which the “start of construction” commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, structures for which the "start of construction" commenced on or after the effective date of a floodplain management regulation adopted by Tempe and includes any subsequent improvements to such structures.

Person means an individual or his agent, a firm, partnership, association or corporation or agent of the aforementioned groups, or this state or its agencies or political subdivisions.

Recreational vehicle means a vehicle which is (1) built on a single chassis, (2) four hundred (400) square feet or less when measured at the largest horizontal projection, (3) designed to be self-propelled or permanently towable by a light duty truck, and (4) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use.

Regulatory flood-elevation means an elevation one foot above the base flood elevation for a watercourse for which the base flood elevation has been determined and shall be determined by the criteria developed by the director of the Arizona Department of Water Resources for all other watercourses.

Riverine means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

Special flood hazard area or area of special flood hazard means an area in the floodplain subject to a one percent or greater chance of flooding in any given year. It is shown on an FBFM or FIRM as Zone A, AO, A1-A30, AE, A99 or AH.

Start of construction includes substantial improvement and other proposed new development, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement or other improvement was within one hundred eighty (180) days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slabs or footings, the installation of piles, the construction of columns or any work beyond the stage of excavation, or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds, not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

Structure means a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

Substantial damage means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed fifty percent (50%) of the market value of the structure before the damage occurred.

Substantial improvement means any repair, reconstruction, rehabilitation, addition or improvement of a structure, the cost of which equals or exceeds fifty percent (50%) of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage", regardless of the actual repair work performed. The term does not, however, include either:

(1) Any project for improvement of a structure to correct existing violations of state or local health, sanitary or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or

(2) Any alteration of a "historic structure", provided that the alteration will not preclude the structure’s continued designation as a "historic structure".

Variance means a grant of relief from the requirements of this article which permits construction in a manner that would otherwise be prohibited by this article.

Violation means the failure of a structure or other development to be fully compliant with Tempe's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in this article is presumed to be in violation until such time as that documentation is provided.

Water surface elevation means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum (NAVD) of 1988, or other datum, of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

Watercourse means a lake, river, creek, stream, wash, arroyo, channel, or other topographic feature on or over which water flows at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.
(Ord. No. 87.25, 9-10-87; Ord. 2005.67, 9-29-05; Ord. No. 2013.52, 10-3-13)

Sec. 12-19. Compliance and jurisdiction of this article.

(a) This article shall apply to all areas of special flood hazards within the corporate limits of Tempe. No structure or land shall hereafter be constructed, located, extended, converted or altered without full compliance with the terms of this article and other applicable regulations.

(b) Within a delineated floodplain, the community development department shall not issue a building permit until receipt of notification from the floodplain administrator that all plans have been reviewed and approved for conformance with this article.

(c) Within a delineated floodplain, the community development department shall not issue a certificate of occupancy until receipt of notification from the floodplain administrator that all construction has been completed in conformance with this article.
(Ord. No. 87.25, 9-10-87; Ord. No. 97.20, 4-10-97; Ord. No. 2010.02, 2-4-10)

Sec. 12-20. Basis for establishing the areas of special flood hazard.

The area of special flood hazard identified by the Federal Emergency Management Agency (FEMA) in a scientific and engineering report entitled "The Flood Insurance Study for Maricopa County and Incorporated areas" dated July 19, 2001, with an accompanying flood insurance rate map and all subsequent amendments or revisions are adopted by reference and declared to be a part of this article. The flood insurance study and the flood insurance rate maps are on file at the city engineering office in the city hall complex located at 31 E. Fifth Street. The flood insurance study and the attendant mapping are the minimum area of applicability of this article and may be supplemented by studies for other areas which allow implementation of this article and which are recommended to the floodplain board by the floodplain administrator. The floodplain board, within its area of jurisdiction shall delineate (or may, by rule, require developers of land to delineate) for areas where development is ongoing or imminent, and thereafter as development becomes imminent, floodplains consistent with the criteria developed by FEMA and the director of water resources.
(Ord. No. 87.25, 9-10-87; Ord. No. 2005.67, 9-29-05; Ord. No. 2013.52, 10-3-13)

Sec. 12-21. Abrogation and greater restrictions.

This article is not intended to repeal, abrogate or impair any existing easements, covenants or deed restrictions. However, where this article and another ordinance, easement, covenant or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.
(Ord. No. 87.25, 9-10-87)

Sec. 12-22. Interpretation.

In the interpretation and application of this article, all provisions shall be considered as minimum requirements, liberally construed in favor of the governing body, and deemed neither to limit nor repeal any other powers granted under state statutes.
(Ord. No. 87.25, 9-10-87)

Sec. 12-23. Warning and disclaimer of liability.

The degree of flood protection required by this article is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This article does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This article shall not create liability on the part of the city, any officer or employee thereof, the State of Arizona, or FEMA for any flood damages that result from reliance on this article or any administrative decision lawfully made thereunder.
(Ord. No. 87.25, 9-10-87; Ord. No. 2013.52, 10-3-13)

Sec. 12-24. Statutory exceptions.

(a) In accordance with A.R.S. § 48-3609, nothing in this article shall:

(1) Affect existing legal uses of property or the right to continuation of such legal use under conditions which existed on the effective date of this article;

(2) Affect repair or alteration of property for the purposes for which such property was legally used on the effective date of this article; providing such repair or alteration does not exceed fifty percent (50%) of the value of the property prior to the repair or alteration; and provided the repair or alteration does not decrease the carrying capacity of the watercourse; or

(3) Affect or apply to facilities constructed or installed pursuant to a certificate or environmental compatibility issued under the authority of Title 40, Chapter 2, Article 6.2 of the Arizona Revised Statutes.

(b) In accordance with A.R.S. § 48-3613, written authorization shall not be required, nor shall the floodplain board prohibit:

(1) The construction of bridges, culverts, dikes and other structures necessary for the construction of public highways, roads and streets intersecting a watercourse;

(2) The construction of structures on banks of a watercourse to prevent erosion of or damage to adjoining land if the structure will not divert, retard, or obstruct the natural channel of the watercourse, or dams for the conservation of floodwaters as permitted by Title 45, Chapter 6 of the Arizona Revised Statutes;

(3) Construction of tailing dams and waste disposal areas for use in connection with mining and metallurgical operations. This paragraph does not exempt those sand and gravel operations which will divert, retard or obstruct the flow of waters in any watercourse;

(4) Any flood-control district, or other political subdivision, from exercising powers granted to it under Title 48, Chapter 21, Article 1, Arizona Revised Statutes;

(5) The construction of streams, waterways, lakes, and other auxiliary facilities in conjunction with development of public parks and recreation facilities by a public agency or political subdivision; or

(6) The construction and erection of poles, towers, foundations, support structures, guy wires, and other facilities related to power transmission as constructed by any utility whether a public service corporation or a political subdivision.

(c) Before any construction authorized by paragraph (b) above may begin, the responsible person must submit plans for the construction to the floodplain administrator for review and comment.

(d) These exemptions do not preclude any person from liability if that person's actions increase flood hazards to any other person or property.

(e) In addition to other penalties or remedies otherwise provided by law, this state, a political subdivision or a person who may be damaged or has been damaged as a result of the unauthorized diversion, retardation or obstruction of a watercourse has the right to commence, maintain and prosecute any appropriate action or pursue any remedy to enjoin, abate or otherwise prevent any person from violating or continuing to violate this section or regulations adopted pursuant to this article. If a person is found to be in violation of this section, the court shall require the violator to either comply with this section if authorized by the floodplain board or remove the obstruction and restore the watercourse to its original state. The court may also award such monetary damages as are appropriate to the injured parties resulting from the violation, including reasonable costs and attorney fees.
(Ord. No. 87.25, 9-10-87; Ord. No. 2013.52, 10-3-13)

Sec. 12-25. Violations; declaration of public nuisance.

(a) It is unlawful for a person to engage in any development or divert, retard or obstruct the flow of waters in any watercourse if it creates a hazard to life or property without securing the written authorization required by A.R.S. § 48-3613. Where the watercourse is a delineated floodplain it is unlawful to engage in any development affecting the flow of waters without securing written authorization required by A.R.S. § 48-3613.

(b) Violators of this article shall be notified in writing by the city engineer. The notice, which shall be sent by certified mail or personally served, shall state specifically the nature of the violation and request that it be corrected. If a violation is not corrected within thirty (30) days after notice, the city engineer shall promptly hand over all pertinent facts to the city attorney with a request for prosecution under the provisions of this article. Any persons

violating any of the provisions of this article shall be guilty of a misdemeanor and punishable as set forth in § 1-7 of this code. Tempe may also enforce this article pursuant to A.R.S. § 9-461.03.

(c) If attempts to abate the violation are unsuccessful, the floodplain administrator shall submit to the administrator of Federal Insurance Administration a declaration for denial of insurance, stating that the property is in violation of a cited state or local law, regulation or ordinance, pursuant to § 1316 of the National Flood Insurance Act of 1968, as amended.

(d) All development located or maintained within any area of special flood hazard after the effective date of this article, in violation of this article, is a public nuisance per se and may be abated, prevented or restrained by the city.
(Ord. No. 87.25, 9-10-87; Ord. No. 2013.52, 10-3-13)

Sec. 12-26. Severability.

The ordinance from which this article is derived, and the various parts thereof, are hereby declared to be severable. Should any section of this article be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the article as a whole or any portion thereof other than the section so declared to be unconstitutional or invalid.
(Ord. No. 87.25, 9-10-87)

Sec. 12-27. Establishment of floodplain permit.

A floodplain permit shall be obtained before construction or development begins, including placement of manufactured homes, within any special flood hazard area. Application for a floodplain permit shall be made on forms furnished by the floodplain administrator and may include, but not be limited to, plans, in duplicate, drawn to scale, showing the nature, location, dimensions and elevation of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities; and the location of the foregoing. Specifically, the following information is required:

(1) Proposed elevation, in relation to mean sea level, of the lowest floor (including basement) of all structures; in Zone AO, elevation of existing highest adjacent natural grade and proposed elevation of lowest floor of all structures;

(2) Proposed elevation, in relation to mean sea level, to which any non-residential structure will be floodproofed;

(3) Certification by a registered professional engineer or architect that the floodproofing methods for any nonresidential structure meet the floodproofing criteria in § 12-29(3);

(4) Base flood elevation data for subdivision proposals or other developments greater than fifty (50) lots or five (5) acres; and

(5) Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.
(Ord. No. 87.25, 9-10-87; Ord. 2005.67, 9-29-05; Ord. No. 2013.52, 10-3-13)

Sec. 12-28. Designation, duties and responsibilities of the floodplain administrator.

(a) *Designation.* The city engineer is hereby designated to administer, implement and enforce this article and is hereby authorized and directed to formulate the procedures and criteria necessary to carry out its intent. He may adopt a fee schedule for review of applications for permits and variances from the requirements of this article.

(b) *Duties and responsibilities.* Duties of the floodplain administrator or his designee shall include, but not be limited to:

(1) Review all floodplain permits to determine that:

a. The permit requirements of this article have been satisfied;

b. All other required state and federal permits relating to floodplains and floodways have been obtained;

c. The site is reasonably safe from flooding; and

d. The proposed development does not adversely affect the carrying capacity of areas where base flood elevations have been determined but a floodway has not been designated. For purposes of this article, "adversely affects" means that the cumulative effect of the proposed development, when combined with all other existing and anticipated development within Tempe, will not increase the water surface elevation of the base flood more than one foot at any point.

(2) *Use of other base flood data*. When base flood elevation data has not been provided in accordance with § 12-20, the floodplain administrator shall obtain, review and reasonably utilize any base flood elevation data available from a federal, state or other source in order to administer this article. Any such information shall be consistent with the requirements of FEMA and the director of the Arizona Department of Water Resources and shall be submitted to the floodplain board for adoption.

(3) Obtain and maintain for public inspection and make available as needed for flood insurance policies:

a. The certified regulatory flood elevation required in § 12-29(3)(a);

b. The floodproofing certification required in § 12-29(3)(b);

c. The flood vent certification required in § 12-29(3)(c);

d. The certified elevation required in § 12-32(b);

e. The floodway encroachment certification required in § 12-34(1);

f. Maintain a record of all variance actions, including justification for their issuance, and report such variances issued in its biennial report submitted to FEMA; and

g. Obtain and maintain substantial improvement calculations.

(4) Whenever a watercourse is to be altered or relocated:

a. Notify adjacent communities and the Arizona Department of Water Resources prior to such alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration; and

b. Require that the flood-carrying capacity of the altered or relocated portion of said watercourse is maintained.

(5) Develop substantial improvement and substantial damage procedures:

a. Using FEMA Publication FEMA 123, “Answers to Questions about Substantially Damaged Buildings,” develop detailed procedures for identifying and administering requirements for substantial improvement and substantial damage, to include defining “market value.”

b. Assure procedures are coordinated with other departments and divisions and implemented by Tempe's staff.

(6) Base flood elevations may increase or decrease resulting from physical changes affecting flooding conditions. As soon as practicable, but not later than six (6) months after the date such information becomes available, the city floodplain administrator shall notify FEMA of the changes by submitting technical or scientific data in accordance with Volume 44 of the Code of Federal Regulations, § 65.3. Such a submission is necessary so that upon confirmation of those physical changes affecting flooding conditions, risk premium rates and floodplain management requirements will be based upon current data.

(7) Advise the Flood Control District of Maricopa County and any adjunct jurisdiction having responsibility for floodplain management in writing and provide a copy of the development plans included with all applications for floodplain use permits to develop land in a floodplain or floodway within one mile of the corporate limits of the city. Also, advise the Flood Control District of Maricopa County in writing and provide a copy of any development plan of any major development proposed within a floodplain or floodway which could affect floodplains, floodways or watercourses within the district's area of jurisdiction. Written notice and a copy of the plan of development shall be sent to the district no later than three (3) working days after having been received by the floodplain administrator.

(8) Make interpretations where needed as to the exact location of the boundaries of special flood hazard areas (for example, where there appears to be a conflict

between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in § 12-35.

(9) Take actions on violations of this article as required in § 12-25 herein.

(10) Notify FEMA and the Arizona Department of Water resources of acquisition by means of annexation, incorporation, or otherwise of additional areas of jurisdiction.

(c) Within one hundred twenty (120) days after completion of construction of any flood control protective works which change the rate of flow during the flood or the configuration of the floodplain upstream or downstream from or adjacent to the project, the person or agency responsible for installation of the project shall provide to the governing bodies of all jurisdictions affected by the project a new delineation of all floodplains affected by the project. The new delineation shall be done according to the criteria adopted by the director of the Department of Water Resources of the State of Arizona.
(Ord. No. 87.25, 9-10-87; Ord. 2005.67, 9-29-05; Ord. No. 2013.52, 10-3-13)

Sec. 12-29. Standards of construction.

In all areas of special flood hazards the following standards are required:

(1) *Anchoring:*

a. All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy; and

b. All manufactured homes shall meet the anchoring standards of § 12-33(a).

(2) *Construction materials and methods:*

a. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage;

b. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage;

c. All new construction, substantial improvement, and other proposed new development shall be constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding; and

d. Within zones AH or AO, adequate drainage paths shall be constructed around structures on slopes to guide floodwaters around and away from proposed structures.

(3) *Elevation and floodproofing:*

a. *Residential construction.* Residential construction, new or substantial improvement, shall have the lowest floor, including basement:

i. In an AO zone, elevated to or above the regulatory flood elevation, or elevated at least two (2) feet above the highest adjacent grade if no depth number is specified;

ii. In an A zone where a BFE has not been determined, elevated to or above the regulatory flood elevation or be elevated in accordance with the criteria developed by the director of the Arizona Department of Water Resources; or

iii. In zones AE, AH and A1-30, elevated to or above the regulatory flood elevation.

Upon completion of the structure, the elevation of the lowest floor including basement shall be certified by a registered professional engineer or surveyor, and verified by Tempe's building inspector to be properly elevated. Such certification and verification shall be provided to the floodplain administrator.

b. *Nonresidential construction.* Nonresidential construction, new or substantial improvement, shall either be elevated to conform with paragraph (c)(1) of this section or together with attendant utility and sanitary facilities:

i. Be floodproofed below the elevation recommended under subsection (c)(1) of this section so that the structure is watertight with walls substantially impermeable to the passage of water;

ii. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and

iii. Be certified by a registered professional engineer or architect that the standards of this section are satisfied. Such certification shall be provided to the floodplain administrator.

c. *Flood openings.* All new construction and substantial improvement with fully enclosed areas below the lowest floor (excluding basements) that are usable solely for parking of vehicles, building access or storage, and which are subject to flooding, shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwater. Designs for meeting this requirement must meet or exceed the following criteria:

i. Have a minimum of two (2) openings, on different sides of each enclosed area, having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding. The bottom of all openings shall be no higher than one foot above grade. Openings may be

equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwater; or

ii. If it is not feasible or desirable to meet the openings criteria stated above, a registered engineer or architect may design and certify the openings.

d. *Manufactured homes*. Manufactured homes shall also meet the standards in § 12-33(a).

e. *Attached garages and low cost accessory structures*.

i. A garage attached to a residential structure, constructed with the garage floor slab below the regulatory flood elevation, must be designed to allow for the automatic entry of flood waters. See paragraph (3)(c) of this section. Areas of the garage below the regulatory flood elevation must be constructed with flood resistant materials. See paragraph (2) of this section; and

ii. A garage attached to a nonresidential structure must meet the above requirements or be dry floodproofed.

f. *Detached garages and accessory structures*. "Accessory structure" used solely for parking (two (2) car detached garages or smaller) or limited storage (small, low-cost sheds), may be constructed such that its floor is below the regulatory flood elevation, provided the structure is designed and constructed in accordance with the following requirements:

i. Use of the accessory structure must be limited to parking or limited storage;

ii. The portions of the accessory structure located below the regulatory flood elevation must be built using flood-resistant materials;

iii. The accessory structure must be adequately anchored to prevent flotation, collapse and lateral movement;

iv. Any mechanical and utility equipment in the accessory structure must be elevated or floodproofed to or above the regulatory flood elevation;

v. The accessory structure must comply with floodway encroachment provisions in § 12-34;

vi. The accessory structure must be designed to allow for the automatic entry of flood waters in accordance with paragraph (3)(c) of this section; and

vii. Detached garages and accessory structures not meeting the above standards must be constructed in accordance with all applicable standards in this section.

(Ord. No. 87.25, 9-10-87; Ord. No. 2005.67, 9-29-05; Ord. No. 2013.52, 10-3-13)

Sec. 12-30. Standards for storage of materials and equipment within special flood hazard areas.

(a) The storage or processing of materials that are in time of flooding buoyant, flammable, explosive, or could be injurious to human, animal or plant life is prohibited.

(b) Storage of other material or equipment may be allowed if not subject to major damage by floods and if firmly anchored to prevent flotation or if readily removable from the area within the time available after flood warning.
(Ord. No. 87.25, 9-10-87)

Sec. 12-31. Standards for utilities within special flood hazard areas.

The following standards shall apply to utilities within flood hazard areas:

(1) All new and replacement water supply and sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the system and discharge from systems into floodwaters.

(2) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

(3) Waste disposal systems shall not be installed wholly or partially in a floodway.

(4) Electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
(Ord. No. 87.25, 9-10-87)

Sec. 12-32. Standards for subdivisions.

The following standards shall apply to subdivisions:

(1) All new preliminary subdivision plats and other proposed development (including proposals for manufactured home parks and subdivisions), greater than fifty (50) lots or five (5) acres, whichever is lesser, shall identify the special flood hazard area and the elevation of the base flood;

(2) All final subdivision plans will provide the elevation of proposed structure(s) and pads. The final lowest floor and grade elevations shall be certified by a registered professional engineer or surveyor and provided to the floodplain administrator; and

(3) All subdivision proposals and other proposed development shall be consistent with the need to minimize flood damage. All subdivision proposals and other proposed development shall have public utilities and facilities, such as sewer, gas, electrical and water systems, located and constructed to minimize flood damage. All subdivision proposals and other proposed development shall provide adequate drainage to reduce exposure to flood hazards.
(Ord. No. 87.25, 9-10-87; Ord. No. 2013.52, 10-3-13)

Sec. 12-33. Standards for manufactured homes and recreational vehicles.

(a) All new and replacement manufactured homes and all substantial improvements to manufactured homes within special flood hazard areas shall:

(1) Be elevated so that the bottom of the structural frame or the lowest point of any attached appliances, whichever is lower, is at the regulatory flood elevation; and

(2) Be securely anchored to an adequately anchored foundation system to resist flotation, collapse or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.

(b) All recreational vehicles placed on site will either:

(1) Be on site for fewer than one hundred eighty (180) consecutive days;

(2) Be fully licensed and ready for highway use. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanent attached additions; or

(3) Meet the permit requirements of § 12-27 and the elevation and anchoring requirements for manufactured homes in subsection (a) of this section.

(Ord. No. 87.25, 9-10-87; Ord. No. 2005.67, 9-29-05; Ord. No. 2013.52, 10-3-13)

Sec. 12-34. Floodways.

Located within areas of special flood hazard are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of floodwaters which carry debris, potential projectiles, and erosion potential, the following provisions apply:

(1) Prohibit encroachments, including fill, new construction, substantial improvements and other development, unless certification by a registered professional engineer or architect is provided demonstrating that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge; and

(2) If subsection (a) is satisfied, all new construction and substantial improvements shall comply with all other applicable flood hazard reduction provisions of §§ 12-29 through 12-33.

(Ord. No. 87.25, 9-10-87)

Sec. 12-35. Variances and the right of appeal.

(a) The floodplain administrator may grant variances from the requirements of this article.

(1) A variance shall be granted only for a parcel with physical characteristics so unusual that complying with this article would create an exceptional hardship to the applicant or surrounding property owners.

(2) Those physical characteristics must be unique to that property and not shared by adjacent parcels and pertain to the land, not to any structure, its inhabitants or the property owners.

(b) The floodplain board shall hear and decide appeals when it is alleged there is an error in any requirement, decision or determination made by the floodplain administrator in the enforcement or administration of this article.

(c) In passing upon such applications, consideration shall be given all technical evaluations, all relevant factors, standards specified in other sections of this article, and:

(1) The danger that materials may be swept onto other lands to the injury of others;

(2) The danger of life and property due to flooding or erosion damage;

(3) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

(4) The importance of the services provided by the proposed facility to Tempe;

(5) The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;

(6) The compatibility of the proposed use with existing and anticipated development;

(7) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;

(8) The safety of access to the property in time of flood for ordinary and emergency vehicles;

(9) The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters expected at the site; and

(10) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities, such as sewer, gas, electrical and water systems, and streets and bridges.

(d) Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing §§ 12-28 and 12-29 and items (c)(1) through (10) above have been fully considered. As the lot size increases beyond one-half acre, the technical justification required for issuing the variance increases.

(e) Upon consideration of the factors of items (c)(1) through (10) above and the purposes of this article, the floodplain administrator may attach such conditions to the granting of variances as he deems necessary to further the purposes of this article.

(f) The floodplain administrator shall maintain the records of all variance actions, including justification for their issuance, and report any variances to the FEMA upon request.

(g) Variances may be issued for the repair, rehabilitation or restoration of structures listed in the National Register of Historic Places or the State Inventory of Historic Places, upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

(h) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

(i) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(j) Variances shall only be issued upon:

(1) A showing of good and sufficient cause;

(2) A determination that failure to grant the variance would result in exceptional hardship to the applicant; and

(3) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, or create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

(k) Any applicant to whom a variance is granted shall be given written notice over the signature of a Tempe official that:

(1) The issuance of a variance to construct the structure below the regulatory flood elevation will result in an increased premium rates for flood insurance up to amounts as high as twenty-five dollars ($25) for one hundred dollars ($100) of insurance coverage and will be commensurate with the increased risk to life and property resulting from the reduced lowest floor elevation. Such notice will also state that the land upon which the variance is granted shall be ineligible for exchange of state land pursuant to the flood relocation and land exchange program provided for by Title 26, Chapter 2, Article 2, Arizona Revised Statutes. A copy of the notice shall be recorded by the floodplain board in the office of the Maricopa County Recorder and shall be recorded in a manner so that it appears in the chain of title of the affected parcel of land.

(Ord. No. 87.25, 9-10-87; Ord. No. 2013.52, 10-3-13)

ARTICLE III. SALT RIVER FLOOD CHANNEL

Sec. 12-36. Dumping in flood channel; permit required.

No person, other than the United States government, the state or its governmental subdivisions shall dump or place dirt, sand, gravel, garbage, junk or refuse in the Salt River floodway or floodway fringe which lies within the city, unless such person has first procured a permit for such dumping or placing from the city council.
(Code 1967, § 15-18)

Sec. 12-37. Permit application procedure.

Applications for permits required by this article, along with a five-dollar application fee, which may not be returned, may be filed with the city engineer who shall thereupon make investigations concerning the application, and present the application along with a report concerning it and his recommendation for its approval or disapproval to the city council at a regular city council meeting, held not more than thirty (30) days after the date of filing of the application.
(Code 1967, § 15-19)

Sec. 12-38. Approval or denial of permit; fee.

The city council may grant or refuse a permit under this article and may in its discretion hold a public hearing to determine facts relevant to the application therefor. If the city council has not granted or refused a permit within sixty (60) days after filing of the application, the application shall be deemed approved. Upon approval of the application, the city engineer shall issue a permit upon payment of a five-dollar permit fee.
(Code 1967, § 15-20)

Sec. 12-39. Permit conditions, renewal fee.

The city engineer may impose reasonable conditions upon the use of the permits, and may formulate rules and regulations concerning their use, and in applying for and receiving a permit the applicant agrees to follow these conditions, rules and regulations which are in existence at the time of issuance of the permit, and all conditions, rules and regulations that may be adopted by the city engineer subsequent to the date of issuance. Such permits may be renewed by payment of an annual permit fee of five dollars ($5).
(Code 1967, § 15-21)

Sec. 12-40. Revocation of permit; appeal.

The city engineer may at any time revoke a permit issued pursuant to this article for breach of any conditions, rules or regulations, but the permit holder may appeal such revocation to the city council where he shall be entitled to a public hearing.
(Code 1967, § 15-22)

Sec. 12-41. Altering surface elevation.

No person, other than the United States government, the state or its governmental subdivisions, shall raise or lower the elevation of the surface of the earth within that portion of the Salt River floodway or floodway fringe lying within the city so as to endanger or jeopardize public or private property lying within or without the Salt River floodway or floodway fringe, by increasing the flood danger to or increasing the probable extent of flood damage to such property.
(Code 1967, § 15-23)

Secs. 12-42—12-55. Reserved.

ARTICLE IV. STORM WATER RETENTION

DIVISION 1. GENERALLY

Sec. 12-56. Purpose.

The purpose of this article is to effectively manage storm water runoff within the city with the objectives of:

(1) Supporting sustainable development and redevelopment;

(2) Requiring on-site retention of storm water;

(3) Limiting the need for new municipal storm water drainage infrastructure;

(4) Safeguarding public and private property from storm water flows; and

(5) Minimizing the discharge of pollutants through the city's infrastructure and to waters of the United States.

(Code 1967, § 29A-1; Ord. No. 93.03, 2-11-93; Ord. No. 2004.13, 4-29-04; Ord. No. 2010.02, 2-4-10; Ord. No. 2012.45, 9-20-12)

Sec. 12-57. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Alternative retention criteria area means the following areas:

(1) The area bounded by the north right-of-way of the 202 freeway west of the Union Pacific Railroad and west of Mill Avenue (north of Washington/Curry Road) and by the city limits on the north and west.

(2) On the south side of Tempe Town Lake, the area bounded by the north right-of-way of Rio Salado Parkway, the south bank of the Tempe Town Lake, the north prolongation of Hardy Drive, and the Karsten Golf Course at ASU. On the north side of Tempe Town Lake, the area bounded by the south right-of-way of the 202 freeway, the north bank of the Tempe Town Lake, and the southern prolongation of College Avenue.

(3) The area bounded by the north right-of-way of University Drive, the Union Pacific Railroad, the south right-of-way of Rio Salado Parkway, the west right-of-way of College Avenue and wrapping around the Tempe Butte on the north and east side of the old railroad spur, and the property east of College Avenue known as the Arizona National Guard property.

AZPDES permit means an Arizona pollutant discharge elimination permit issued by the Arizona Department of Environmental Quality.

Best management practices mean schedules of activities, prohibition of practices, structural and non-structural controls, operational and maintenance procedures, control techniques or systems, design and engineering methods, and other management practices to prevent or reduce the discharge of pollutants.

Building floor elevation means the finished floor elevation in feet above mean sea level of the lowest floor, including basement, of a building. Building floor elevations shall be related to the city datum.

Building pad elevation means the elevation in feet above mean sea level of the material on which the floor slab directly rests.

Drainage plan means that certain plan on which are shown the locations, dimensions and elevations of proposed storm water storage areas.

First flush means the first runoff from a storm up to the volume of a two-year storm.

One-hundred-year storm means a storm that has one percent (1%) chance of occurring, in accordance with criteria established by the city engineer.

On-site storage means storage on public or private property or any combination thereof, but not on public street or alley right-of-way.

Retention means total storage, without overland relief, of flows generated during the design storm.

Two-year storm means a storm that has fifty percent (50%) chance of occurring, in accordance with criteria established by the city engineer.
(Code 1967, § 29A-2; Ord. No. 93.03, 2-11-93; Ord. No. 2004.13, 4-29-04; Ord. No. 2012.45, 9-20-12)

Sec. 12-58. Repealed.
(Ord. No. 93.03, 2-11-93)

Sec. 12-59. Violations.

(a) Violators of this article shall be notified in writing by the city engineer. The notice, which shall be sent by certified mail, shall state specifically the nature of the violation and request that it be corrected. If a violation is not corrected within thirty (30) days after notice, the city engineer shall promptly hand over all pertinent facts to the city attorney with a request for prosecution under the provisions of this article.

(b) Any persons violating any of the provisions of this article shall be guilty of a misdemeanor and punishable as set forth in § 1-7 of this code.
(Code 1967, § 29A-4)

Sec. 12-60. Repealed.
(Ord. No. 2004.13, 4-29-04; Ord. No. 2010.02, 2-4-10; Ord. No. 2012-45, 9-20-12)

Secs. 12-61—12-70. Reserved.

DIVISION 2. ADMINISTRATION

Sec. 12-71. Generally.

(a) Except as otherwise provided herein, the public works director shall administer and implement the provisions of this article. Any powers granted to or duties imposed upon the public works director may be delegated by the public works director to other city personnel but shall remain the responsibility of the public works director.

(b) The city engineer is hereby designated as the enforcing officer of this article and is hereby authorized and directed to formulate the procedures and criteria necessary to carry out the intent.

(c) The community development department shall not issue a building permit until receipt of notification from the city engineer that a drainage plan has been approved in accordance with this article.

(d) The community development department shall not issue a certificate of occupancy until receipt of notification from the city engineer that construction has been completed in substantial compliance with the approved drainage plan or that subsequent completion has been guaranteed by other means acceptable to the city.
(Code 1967, § 29A-5; Ord. No. 93.03, 2-11-93; Ord. No. 97.20, 4-10-97; Ord. No. 2010.02, 2-4-10; Ord. 2012.45, 9-20-12)

Sec. 12-72. Appeals.

The public works director is charged with the responsibility for administration and interpretation of this article. Any person who is dissatisfied or aggrieved by any decision of the public works director may appeal such decision by filing written notice of appeal with the city clerk. Such notice of appeal shall be forwarded to the city council at its next regularly scheduled meeting, at which time a date will be set for hearing on the appeal. The decision of the city council on the appeal shall be final.
(Code 1967, § 29A-6; Ord. 2012.45, 9-20-12)

Sec. 12-73. Drainage permits.

(a) No person may fill or substantially alter the surface of any lot, plot or parcel of land without first having obtained a drainage permit from the city engineer.

(b) Prior to issuing a drainage permit, the city engineer shall require the owner/developer to submit for approval a drainage plan showing existing and proposed grades with calculations showing the volume of storage required and provided. Such plans and calculations shall be prepared under the direction of a professional civil engineer registered in the State of Arizona, except as hereinafter provided.

(c) In no event shall a drainage permit be issued unless the drainage plan has been approved by the city engineer and establishes that storm water runoff from the lot, plot or parcel of land will not adversely impact other property or city infrastructure. This article shall not create liability on the part of the city, any officer or employee thereof, for any damages that result from reliance on this article or any administrative decision lawfully made thereunder.

(d) No drainage permit shall be issued by the city engineer, except as provided in this article. The owner/developer of each lot, plot or parcel of land within the city is required to provide storage of sufficient volume to hold the total runoff from a one-hundred-year storm falling on that lot, plot or parcel of land and on adjacent street and alley rights-of-way, except arterial streets, unless one of the following applies:

(1) The owner/developer of a lot, plot, or parcel of land: (i) discharges the total runoff from a one-hundred-year storm falling on that lot, plot, or parcel of land directly to waters of the United States in compliance with all state and federal laws and regulations; and (ii) either provides storage of sufficient volume to hold the total runoff from a two-year storm or has submitted a best management practices plan, which has been approved by the public works director in accordance with § 12-127(b). Best management practices for discharges directly to Tempe Town Lake shall include, at a minimum, detention and treatment of the first flush; or

(2) Inside the alternative retention criteria area, the owner/developer of a lot, plot or parcel of land either provides storage of sufficient volume to hold the total runoff from a two-year storm falling on that lot, plot, or parcel of land or has submitted a best management practices plan, which has been approved by the public works director in accordance with § 12-127(b). Best management practices for discharges directly to Tempe Town Lake shall include, at a minimum, detention and treatment of the first flush.

(e) The owner/developer shall not be required to provide storage for runoff from a lot, plot or parcel of land other than his own.

(f) All drainage permits required by the provisions of this article shall be issued by the city engineer. Permits will be issued only upon approval of a drainage plan and payment of fees. (see Appendix - Drainage Permit Fees)

(g) The owner/developer will provide construction staking.

(h) The city will inspect and accept the work, including material testing necessary to determine that the work is done in accordance with the requirements of the city engineer.

(i) Prior to acceptance of the work, the owner/developer shall furnish a reproducible copy of the approved drainage plan containing a certificate, signed by a professional engineer or land surveyor registered in this state, certifying that the improvements were constructed in accordance with the approved plan.
(Code 1967, § 29A-7; Ord. No. 93.03, 2-11-93; Ord. No. 97.20, 4-10-97; Ord. No. 2004.13, 4-29-04; Ord. No. 2010.02, 2-4-10; Ord. 2012.45, 9-20-12)

Secs. 12-74—12-85. Reserved.

DIVISION 3. STANDARDS AND SPECIFICATIONS

Sec. 12-86. On-site storage.

(a) On-site storage may be provided in any of the following ways:

(1) Individual storage;

(2) Central storage; or

(3) Combination storage.

(b) Individual storage shall consist of providing adequate storage volume for the design storm on a lot, plot or parcel of land for all water falling on the lot, plot or parcel of land. Storage volume shall also be provided for adjacent streets and alleys, except for arterial streets. In single-family residential zones, the maximum depth of water in the storage area at design storm shall be eight (8) inches, unless otherwise approved by the city engineer. In all other zoning categories, the maximum depth of water at design storm shall be three (3) feet.

(c) Central storage shall consist of providing adequate storage volume for the appropriate design storm in one or more central basins to handle the runoff from more than one lot, plot or parcel of land. The maximum depth of water in the storage area at design storm shall be three (3) feet, unless otherwise approved by the city engineer.

(1) The owner of the property on which the central storage basin is to be located shall grant a right to use such property for drainage purposes. Such grant shall be made by means of a document which shall be approved by the city attorney and recorded in the office of the county recorder and which shall contain the following provisions:

a. A legal description of the property to be used for storage purposes;

b. A legal description of the property which is permitted to drain to the basin;

c. A statement that the owner is responsible for the construction and maintenance of the basin in accordance with standards established by the city engineer;

d. A statement that no buildings or structures may be constructed within the basin;

e. A statement that the property shall be used for storm water storage so long as it is required in the opinion of the city engineer; and

f. Such other provisions as are deemed by the city attorney to be necessary to effectuate the provisions of this article.

(2) In lieu of the requirements contained in subparagraph (c)(1), the owner may dedicate the property to be used for central storage to the city for public use for basins greater than five (5) acres. Such dedication shall become effective only upon acceptance by the city council. As conditions precedent to the acceptance of a dedication, the city council may require the owner to comply with the following conditions:

a. Grading of the basin in accordance with standards established by the city engineer;

b. Construction of dry wells as necessary to dispose of nuisance water;

c. Seeding to provide ground cover;

d. Construction of flood irrigation or sprinkler systems; and

e. Such other construction as the city council may deem necessary to the proper public use of the property.

Upon the acceptance of the dedication by the city council and completion of any required construction, the city will assume responsibility for the operation and maintenance of the property and all facilities thereon.

(d) Combination storage shall consist of providing adequate storage volume for the design storm by a combination of individual and central storage. All requirements and conditions outlined in subsections (b) and (c) of this section shall apply.
(Code 1967, § 29A-8; Ord. No. 93.03, 2-11-93)

Sec. 12-87. Building floor elevations.

(a) The minimum building floor elevation shall be ten (10) inches above the design high water elevation for the design storm or the outfall of the lot, whichever is higher, in the case of individual or combination storage.

(b) In the case of central storage, the minimum building floor elevation shall be ten (10) inches above the outfall of the lot.

(c) The owner/developer shall have the option of floodproofing, in a manner acceptable to the city engineer, to the minimum building floor elevation.

(d) The provisions of this section shall not apply to any existing building or structure, nor to an expansion of less than twenty-five percent (25%) in floor area to an existing building or structure; but in no case shall the floor elevation of the extension be below the existing floor of the habitable space.

(e) Prior to occupying any building or structure constructed under the provisions of this article, the owner/developer shall submit to the city engineer a certificate, signed by a professional engineer or land surveyor registered in this state, giving the actual building pad elevation as constructed.
(Code 1967, § 29A-9; Ord. No. 93.03, 2-11-93)

Secs. 12-88—12-100. Reserved.

ARTICLE V. STORM WATER SYSTEM EXTENSION POLICY

Sec. 12-101. Established.

There is hereby established, as set forth in this article, a policy and an orderly program for extension of the city storm water system to serve those properties within and without the city limits.
(Code 1967, § 31-12)

Sec. 12-102. Definitions.

For the purposes of this article, the following words, terms and phrases shall have the meanings respectively ascribed to them by this section, except where the context clearly indicates a different meaning:

Cost means construction contract price.

Developer/owner means any person engaged in the development of one or more parcels of land and contracting for an extension of the city storm water system.

Facility means any storm water conduit, drainage structure, retention basin, pumping equipment and any other related construction which constitutes or will constitute part of the city storm water system.

Participating charge means proportionate share of the cost (construction contract price) based on benefits derived in accordance with standards determined by the public works director and approved by the city council for any existing storm water facility.
(Code 1967, § 31-13; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Sec. 12-103. Preparation of plans, specifications.

Upon development of any property, area or subdivision within or without the city limits for which storm water facilities are required, all plans and specifications for such facilities shall be prepared by a professional engineer, registered in the state, and in accordance with the city department of public works standards and specifications.
(Code 1967, § 31-14)

Sec. 12-104. Agreement with city prerequisite to connection.

Before the extension of or connection to any facility shall be made to serve a subdivision or platted or unplatted property, the developer/owner desiring such extension or connection must execute an agreement with the city which shall include the following:

(1) A warranty of workmanship and material for facilities installed which shall run to the benefit of the city for a period of at least one year from the date of acceptance by the city;

(2) A diagram of all property which may be served by any facility to be installed;

(3) A statement that the city acquires ownership of any facility upon completion and acceptance of the work by the city;

(4) A statement that the city's cost for inspecting such work shall be paid by the developer/owner;

(5) A statement of the developer/owner's proportionate share of the cost for previously installed facilities; and

(6) A statement of the maximum possible reimbursement that may accrue to the developer/owner for the cost of facilities to be installed by him but from which others may be served. If others are served, a participating charge will be made at the time of their development.

(Code 1967, § 31-15)

Sec. 12-105. Financing of connections.

The following provisions may be applicable to facilities to serve individuals, unplatted areas and subdivisions:

(1) When an existing facility will be used, a participating charge based upon that portion of the property to be developed shall be placed on deposit with the city prior to developing the property;

(2) No person shall be permitted to extend service to adjacent property owned by someone else or to property for which a participating charge has not been advanced and deposited with the city without written approval of the city;

(3) The city will establish a separate account for each reimbursement agreement for the collection of participating charges and reimbursements to the party who financed the installation of the facility. Sums collected shall be treated as trust funds to be paid upon receipt. In no event will the sums reimbursed exceed the contract price for the installation of the facility;

(4) The reimbursement agreement shall state to whom reimbursement shall be made and shall include a diagram of the property from which reimbursements are contemplated. Should the property or any portion thereof not be served by the facility installed under the agreement, the developer/owner will not be reimbursed for the proportionate share of the cost otherwise due from such property;

(5) Any developer/owner may assign the benefits arising out of any storm water facility agreement with the city; provided, however, that any such assignment shall not relieve the developer/owner from his duties and obligations under such agreement;

(6) Any agreement providing for reimbursement of the developer/owner by a subsequent and adjacent developer/owner shall run for a maximum period of twenty (20) years after execution of the agreement and thereupon terminate;

(7) The city shall be responsible for servicing and maintaining all storm water facilities approved and accepted by the city; and

(8) The city shall be responsible for providing major storm water facilities but may require developer/owner to pay their proportionate share of the cost of such facilities, as established by the city.

(Code 1967, § 31-16)

Secs. 12-106—12-114. Reserved.

ARTICLE VI. STORM WATER POLLUTION CONTROL

DIVISION 1. GENERAL PROVISIONS

Sec. 12-115. Purpose and policy.

(a) This article sets forth requirements for the control of pollutants that are or may be discharged to the public storm drain system. The purpose is to improve the quality of storm water discharges and to enable the city to comply with all applicable state and federal laws, including but not limited to, the Clean Water Act (33 United States Code § 1251 et seq.), the National Pollutant Discharge Elimination System Regulations (40 Code of Federal Regulations Part 122), and the Arizona Pollutant Discharge Elimination System Regulations (Arizona Administrative Code, Title 18, Chapter 9, Article 9). The objectives of this article are:

(1) To reduce the discharge of pollutants from our public storm sewer system into receiving waters, waterways, and groundwater;

(2) To control the discharge to the public storm drain system resulting from spills, dumping, or disposal of materials other than storm water;

(3) To enable the city to comply with the conditions of its National Pollutant Discharge Elimination System storm water permit or Arizona Pollutant Discharge Elimination System storm water permit;

(4) To prevent discharges that could cause or contribute to damage to the public storm drain system;

(5) To promote the proper management of hazardous materials and other wastes to prevent their discharge into the public storm drain system;

(6) To reduce pollutants in storm water to the maximum extent practicable; and

(7) To protect the public health and the environment.

(b) This article establishes discharge prohibitions; authorizes the identification of controls to reduce the discharge of pollutants that may be required; provides for necessary inspections, monitoring, compliance, and enforcement activities; and establishes administrative review procedures.
(Ord. No. 98.34, 08-13-98; Ord. 2004.13, 4-29-04)

Sec. 12-116. Administration.

Except as otherwise provided herein, the public works director shall administer, implement, and enforce the provisions of this article. Any powers granted to or duties imposed upon the public works director may be delegated by the public works director to other city personnel, but remain the responsibility of the public works director.
(Ord. No. 98.34, 08-13-98; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Sec. 12-117. Abbreviations.

The following abbreviations, when used in this article, shall have the designated meanings:

ADEQ - Arizona Department of Environmental Quality
AZPDES - Arizona Pollutant Discharge Elimination System
CFR - Code of Federal Regulations
EPA - United States Environmental Protection Agency
NPDES - National Pollutant Discharge Elimination System
(Ord. No. 98.34, 08-13-98; Ord. No. 2004.13, 4-29-04)

Sec. 12-118. Definitions.

Unless a provision explicitly states otherwise, the following terms and phrases, as used in this article, shall have the meanings hereinafter designated:

Arizona Department of Environmental Quality, or ADEQ, means the state agency charged with primary enforcement of the federal Clean Water Act.

AZPDES storm water permit means an Arizona pollutant discharge elimination system permit issued by the ADEQ which authorizes the discharge of storm water pursuant to the Clean Water Act § 402.

Best management practices mean schedules of activities, prohibition of practices, structural and non-structural controls, operational and maintenance procedures, control techniques or systems, design and engineering methods, and other management practices to prevent or reduce the discharge of pollutants.

City means the City of Tempe.

Clean Water Act means the Federal Water Pollution Control Act, as amended, 33 United States Code § 1251 et seq.

Director means the public works director who is hereby charged with certain duties and responsibilities by this article, or other city personnel designated by the public works director to act on his/her behalf.

NPDES storm water permit means a National Pollutant Discharge Elimination System permit issued by the EPA which authorizes the discharge of *storm water* pursuant to the Clean Water Act § 402.

Person means any individual, partnership, co-partnership, firm, company, corporation, limited liability company, association, joint stock company, trust, estate, governmental entity, or any other legal; or their legal representatives, agents, or assigns. This definition includes all federal, state, and local governmental entities.

Pollutant means any solid, liquid, gaseous, or other substance that can alter the physical or chemical properties of water including, but not limited to: fertilizers, solvents, sludge, petroleum and petroleum products, solid waste, garbage, biological materials, radioactive materials, sand, dirt, animal wastes, acids, and bases.

Pollution means the presence of a pollutant(s) on land or in storm water.

Premises means any building, lot, parcel, real estate, or land or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

Public storm drain system means all or any part of the storm drains, ditches, pipes, graded areas, and gutters located within public easements, public rights-of-way, public parks, streets, roads, highways, common areas, or required onsite retention areas, or publicly owned real property that are used for collecting, holding, or conveying storm water.

Release means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, placing, leaching, dumping, or disposing into or on any land in a manner that can cause pollution.

Storm water means any flow occurring during or following any form of natural precipitation and resulting from such precipitation.
(Ord. No. 98.34, 08-13-98; Ord. No. 2001.17, 7-26-01; Ord. No. 2004.13, 4-29-04; Ord. No. 2010.02, 2-4-10; Ord. 2012.45, 9-20-12)

Secs. 12-119 to 12-124. Reserved.

DIVISION 2. PROHIBITIONS AND CONTROLS TO REDUCE THE DISCHARGE OF POLLUTANTS IN STORM WATER

Sec. 12-125. Prohibitions of non-storm water discharges to the public storm drain system; exemptions.

(a) Unless expressly authorized or exempted by this article, no person shall cause or allow the release to a public right-of-way or public storm drain system of any substance that is not composed entirely of storm water.

(b) Unless expressly authorized or exempted by this article, no person shall use, store, spill, dump, or dispose of materials in a manner that those materials could cause or contribute to the addition of pollutants to storm water.

(c) The following discharges are exempt from the prohibition set forth in subsections (a) and (b) of this section provided they are not significant sources of pollutants to waters of the United States:

(1) The prohibition on discharges shall not apply to any discharge regulated under a NPDES OR AZPDES permit issued to the discharger under the authority of the EPA OR ADEQ, respectively.

(2) The prohibition on discharges shall not apply to any discharge that is eligible for coverage under a general NPDES or AZPDES permit issued under the authority of EPA or ADEQ, respectively.

(3) Discharges caused by a person from any of the following activities:

a. Water line flushing and other discharges from drinking water sources;

b. Lawn watering;

c. Irrigation water;

d. Diverted stream flow;

e. Rising groundwater;

f. Uncontaminated groundwater infiltration;

g. Uncontaminated pumped groundwater;

h. Foundation and footing drains;

i. Water from crawl space pumps;

j. Air conditioning condensation and evaporative cooler run-off;

k. Natural springs;

l. Individual residential car washing;

m. Flows from riparian habitats and wetlands, as those areas are designated under applicable federal and state laws;

n. Dechlorinated swimming pool discharges;

o. Flows resulting from fire fighting activities;

p. Dust control watering; or

q. Any other activity that is exempted under the City's NPDES OR AZPDES storm water permit.

(d) No person shall discharge to a publicly owned right-of-way or the public storm drain system any exempted discharge under subsection (c) paragraph 2 of this section if the public works director identifies and provides written notice to the person that the discharge has the potential to be a source of pollutants to receiving waters, waterways, or groundwater.

(e) No person shall discharge to the public storm sewer system where such a discharge would result in or contribute to a violation of the NPDES or AZPDES storm water permit issued to the city, either separately considered or when combined with other discharges. Liability for any such discharge shall be the responsibility of the person causing or responsible for the discharge.

(f) No person shall establish, use, maintain, or continue any connection to the public storm sewer system which has caused or will likely cause a violation of this section. Any connection that was permitted or authorized by a governmental entity with jurisdiction and authority, will be discontinued upon thirty (30) days written notice by the public works director to: (a) the last known address of the owner of the property and by posting on the property; or (b) the person maintaining the connection. This prohibition is retroactive and shall apply to any connection that was made in the past, regardless of whether it was made under a permit or other authorization, or whether it was permissible under the law or practices applicable or prevailing at the time of the connection.
(Ord. No. 98.34, 08-13-98; Ord. No. 2001.17, 7-26-01; Ord. 2004.13, 4-29-04; Ord. No. 2010.02, 2-4-10)

Sec. 12-126. Cleanup and notification requirements.

(a) As soon as any owner or operator has actual or constructive knowledge of any release which may result in pollutants or discharges that are not in compliance with this article entering the public storm drain system, such person shall promptly take all necessary steps to ensure the discovery of the source and extent and proceed with containment and cleanup of such release.

(b) In addition to the requirements contained in subsection (a) of this section, such person shall notify the public works director of the release in both of the following manners:

(1) By telephone within twenty-four (24) hours or by 12:00 noon of the next work day if knowledge is received on a weekend or holiday; and

(2) In writing within three (3) days of receiving knowledge of the release.
(Ord. No. 98.34, 08-13-98; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Sec. 12-127. Practicable best management practices.

(a) All persons owning or operating facilities or engaged in activities which will or may reasonably be expected to result in pollutants entering the public storm drain system or affecting the public storm drain system, shall undertake all practicable best management practices identified by the public works director to minimize such pollutants. Such measures shall include the requirements imposed by all of the following:

(1) This chapter;

(2) Chapter 33, Article VI (Water Wasting); § 29-20 (discharge of water from private premises); and § 19-50 (hauling waste fill or waste excavation material); and

(3) Any written guidelines which may be developed or referenced for general use by the public works director.

(b) All owners/developers of lots, plots, or parcels of land who are required under § 12-73(d) to provide best management practices shall submit a best management practices plan to the public works director for approval at the time that a drainage plan is submitted under § 12-73(b). The public works director shall approve a best management practices plan if the plan includes practices that will reduce pollutants in storm water runoff to the maximum extent practicable.

(c) If a practicable best management practice is required by the public works director, the person receiving the notice of such a requirement may petition the public works director to reconsider the application of the practicable best management practice to the facility or the activity. The written petition must be received within ten (10) working days setting forth any reasons and proposed alternatives. The public works director will act within thirty (30) days on the request.
(Ord. No. 98.34, 08-13-98; Ord. No. 2001.17, 7-26-01; Ord. No. 2004.13, 4-29-04; Ord. No. 2010.02, 2-4-10; Ord. 2012.45, 9-20-12)

Sec. 12-128. Construction sites.

(a) Any person performing construction shall use all practicable best management practices identified by the public works director to minimize pollutants and sediment from leaving the construction site. This is in addition to what may be required in § 19-50 (hauling waste fill or waste excavation material) of the Tempe City Code. At a minimum, the person shall do both of the following:

(1) Not cause or contribute to a violation of § 12-125; and

(2) Comply with any written guidelines which may be developed or referenced for general use by the public works director.

(b) If a practicable best management practice is required by the public works director, the person receiving the notice of such a requirement may petition the public works director to reconsider the application of the practicable best management practice to the construction activity. The written petition must be received within ten (10) working days setting forth any reasons or proposed alternatives. The public works director will act within thirty (30) days on the request.
(Ord. No. 98.34, 08-13-98; Ord. No. 2001.17, 7-26-01; Ord. No. 2004.13, 4-29-04; Ord. No. 2010.02, 2-4-10)

Secs. 12-129 to 12-134. Reserved.

DIVISION 3. COMPLIANCE MONITORING

Sec. 12-135. Inspection and sampling; right of entry.

(a) Upon presentation of credentials and at all reasonable or necessary hours, all authorized employees of the city shall have access to all premises and to all records pertaining to those premises for purposes of ensuring compliance with this article. Inspection, interviewing, copying, sampling, photographing, and other activities conducted on the premises shall be limited to those which are reasonably needed by the city in determining compliance with the requirements of this article. All persons shall allow such activities under safe and nonhazardous conditions with a minimum of delay.

(b) In addition to those activities described in subsection (a) of this section, authorized city employees shall engage in monitoring necessary to ensure compliance with this article. The public works director may establish on premises such devices as the public works director reasonably determines are necessary to conduct sampling or metering operations. Such devices shall be installed so as to minimize the impact on the owner and occupant of the premises. During all inspections as provided in subsection (a) of this section, authorized city employees may take any samples necessary to aid in the pursuit of the inquiry or in the recordation of the activities on the premises.

(c) The public works director may order any person engaged in any activity or owning or operating on any premises which may cause or contribute to discharges of pollutants to the public storm drain system in violation of this article to undertake such monitoring activities and analyses and furnish such reports as the public works director reasonably may specify. The costs of such activities, analyses, and reports shall be borne by the recipient of the order.

(d) If the public works director has been refused access to any premises, and is able to demonstrate probable cause to believe that there may be a violation of this article, or that there is a need to inspect, interview, copy, photograph or sample as part of an inspection and sampling procedure of the city designed to determine compliance with the requirements of this article or any related laws or regulations, or to protect the environment and the public health, safety and welfare of the community, then the public works director may seek issuance of a search warrant from the municipal court of the city. The public works director may, in addition, obtain an "inspection warrant" pursuant to chapter 34 of this code.
(Ord. No. 98.34, 08-13-98; Ord. No. 2001.17, 7-26-01; Ord. No. 2004.13, 4-29-04; Ord. No. 2010.02, 2-4-10)

Secs. 12-136—12-144. Reserved.

DIVISION 4. ENFORCEMENT

Sec. 12-145. Purpose.

The purpose of this division is to ensure compliance with practicable best management practices required by the public works director, to cease/discontinue pollutant discharges, to provide for civil penalty actions in municipal court, or to institute actions through the city attorney in the appropriate court for civil or criminal enforcement of this article.
(Ord. No. 98.34, 08-13-98; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Sec. 12-146. Notice of violation.

When the public works director finds that any person has violated, or continues to violate, any provision of this article, or any related laws or regulations, the public works director may serve upon that person a written notice of violation. The person, within ten (10) working days of the receipt of this notice, must provide in writing to the public works director an explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific actions to be taken by the person in violation to prevent subsequent violations. Submission of this plan in no way relieves the person of liability for any violations in the notice or that occurred before or after receipt of the notice of violation nor limits the public works director's authority to take further enforcement actions. Nothing in this section shall limit the authority of the public works director to take any action, including emergency actions or any other enforcement action, without first issuing a notice of violation. In appropriate situations the public works director may notify the person orally either in person or by telephone prior to, and in some cases in lieu of, written notification.
(Ord. No. 98.34, 08-13-98; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Sec. 12-147. Consent orders; best management practice.

The city may enter into consent orders, assurances of voluntary compliance, negotiated settlement agreements or other similar documents establishing an agreement with any person responsible for noncompliance. Such documents will include specific action to be taken by the person to correct the noncompliance within a time period specified by the document, including an identification and description of the best management practices and measures to utilize in implementing the order. Such documents shall have the same force and effect as any other orders issued under this article and shall be judicially enforceable.
(Ord. No. 98.34, 08-13-98; Ord. No. 2001.17, 7-26-01; Ord. No. 2004.13, 4-29-04)

Sec. 12-148. Cease and desist orders.

(a) When the public works director finds that a person has violated, or continues to violate, any provision of this article or any related laws or regulations, or that the person's past violations are likely to recur, the public works director may issue an order to the person directing them to cease and desist all such violations and direct the person to:

(1) Immediately comply with all requirements; and

(2) Take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation.

(b) Issuance of a cease and desist order shall not be a bar against, or a prerequisite for, taking any other action against the person. A person's failure to comply with an order of the public works director issued pursuant to this division shall constitute a violation of this article.
(Ord. No. 98.34, 08-13-98; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Sec. 12-149. Civil penalties.

(a) In addition to any other enforcement authority contained in this article, the city may issue a civil citation to any person who has violated, or continues to violate, any provision of this article or any related laws or regulations. The form of the citation shall be established by the city attorney.

(b) If the defendant fails to appear as directed on the citation, the court upon request of the city, shall enter a default judgment for the amount of the fine indicated for the violation charged, together with a default penalty not to exceed fifty dollars ($50).

(c) The civil penalty for violating this article shall be an amount not to exceed two thousand five hundred dollars ($2,500) per violation per day.

(d) All civil hearings under this article before the Tempe Municipal Court shall be informal and without a jury, except that testimony shall be given under oath or affirmation. The Rules of Evidence do not apply, except for any rules or statutes relating to privileged communications. If the allegation in the citation is denied, the city is required to prove the violation by a preponderance of the evidence. The court is authorized to make such orders as may be necessary or appropriate to fairly and efficiently decide the case at hand. An appeal from the judgment of the court may be taken in the same manner as civil traffic appeals.
(Ord. No. 98.34, 08-13-98; Ord. No. 2001.17, 7-26-01; Ord. No. 2002.35, 8-8-02; Ord. No. 2004.13, 4-29-04; Ord. No. 2012-40, 9-6-12)

Sec. 12-150. Injunctive relief.

When the public works director finds that a person has violated, or continues to violate, any provision of this article or any related laws or regulations, or that the person's past violations are likely to recur, the city may petition the Superior Court of Arizona, Maricopa County, through the city attorney for the issuance of a temporary or permanent injunction, as appropriate, which restrains or compels the specific performance of any order or other requirement imposed by this article on activities of the person. The city may also seek such other action as is appropriate for legal or equitable relief.
(Ord. No. 98.34, 08-13-98; Ord. No. 2001.17, 7-26-01; Ord. No. 2004.13, 4-29-04; Ord. No. 2010.02, 2-4-10)

Sec. 12-151. Criminal prosecution.

A person who willfully or negligently violates any provision of this article, or any related laws or regulations shall, upon conviction, be guilty of a class one misdemeanor, punishable by a fine of not more than two thousand five hundred dollars ($2,500) per violation, per day, or imprisonment for not more than six (6) months, or both.
(Ord. No. 98.34, 08-13-98)

Sec. 12-152. Remedies non-exclusive.

The remedies provided for in this article are not exclusive. Each day's noncompliance constitutes a new violation. The city may take any, all or any combination of these actions against a noncompliant person.
(Ord. No. 98.34, 08-13-98; Ord. No. 2001.17, 7-26-01; Ord. No. 2004.13, 4-29-04)

Sec. 12-153. Enforcement response plan and penalty policy.

(a) The public works director is authorized to develop and submit to the city council for its approval by resolution:

(1) An enforcement response plan; and

(2) Penalty policy.

(b) The enforcement response plan and penalty policy developed by the public works director pursuant to this section may be combined with the plans and policies developed pursuant to §§ 27-95 and 33-111, as determined appropriate by the public works director, to ensure consistent enforcement response plans and penalty policies.
(Ord. No. 2012-40, 9-6-12)

Chapter 13

ELECTIONS[1]

Sec. 13-1. Polling places; manner of voting.

The city council shall no later than sixty (60) days prior to any city election designate by resolution the polling places and voting districts and whether voting shall be by voting machines or paper ballots.
(Code 1967, § 11-2)

State law reference—Ballots, A.R.S. §§ 16-421, 16-423, 16-443.

Sec. 13-2. Elections to be nonpartisan.

All elections for mayor and city councilmen shall be nonpartisan and nothing on the ballot in any primary or general election shall be indicative of the source of the candidacy or of the support of the candidate.
(Code 1967, § 11-3)

State law reference—Nonpartisan elections required if majority vote obtained in primary election, A.R.S. § 9-821.01.

Sec. 13-3. Watchers and challengers at polling places.

A candidate for city office shall be entitled, upon written application to the city clerk at least five (5) days before a primary election or at least five (5) days before a general election, to appoint one person to represent him as a watcher or challenger at each polling place. Such watchers or challengers shall have all the rights and privileges prescribed under the election laws of the state.
(Code 1967, § 11-4)

Sec. 13-4. Outcome final upon receipt of majority vote.

Any candidate for mayor or city councilman who shall receive a majority of all votes cast at the primary election shall be declared to be elected to the office for which he is a candidate, effective as of the date of the general election, and no further election shall be held as to such candidate. If more candidates receive a majority of all votes cast than there are offices to be filled, then those candidates, equal in number of the offices to be filled, receiving the highest number of votes, shall be declared to be elected.
(Code 1967, § 11-7)

Sec. 13-5. General election—Designation of candidates.

If at any primary election held as provided in this chapter there is any office for which no candidate was elected, then such election shall be considered to be a primary election for nomination of candidates for such office, and a general election shall be held to vote for candidates to fill such office. Candidates to be placed on the ballot at the general election shall

[1]**Charter reference**—Nominations and elections, § 7.01 et seq.
State law reference—City elections, A.R.S. §§ 9-521 et seq., 16-101 et seq.

be those not elected at the primary election. The number of candidates shall be equal in number of candidates to twice the number to be elected to any office not filled at the primary election, or less than that number if there be less than that number named on the primary election ballot; candidates who receive the highest number of votes for the respective offices at the primary election shall be the only candidates listed on the ballot for the general election; provided, that if there is any candidate who received an equal number of votes, then all such candidates receiving an equal number of votes shall likewise become candidates for such office at the general election.
(Code 1967, § 11-8)

State law reference—Authority to provide that candidate receiving majority of votes at primary election is elected, A.R.S. § 9-821.01.

Sec. 13-6. Same—Determination of winners.

The candidates equal in number to the persons to be elected who shall receive the highest number of votes at a general election shall be declared elected to such office.
(Code 1967, § 11-9)

Sec. 13-7. Responsibilities of city clerk.

The city clerk is hereby authorized and directed to prepare all materials necessary to conduct city elections; to provide nominating petitions, certificate of nomination papers, nomination papers, reports designating financial agents, register of voters, poll books and other supplies; to give public notice of the council's resolution and of the method of registration of voters; and to do all things necessary and required by law to conduct such elections all as provided for by the statutes of the state and the charter of the city.
(Code 1967, § 11-10)

Sec. 13-8. Absentee ballots.

(a) The absentee ballot shall be identical to the regular official ballots, except that it shall have printed or stamped on the stub thereof "Absentee".

(b) The city clerk shall prepare the official absentee ballot and have them available for voting purposes not later than the twenty-fifth day preceding the Saturday before the election.
(Ord. No. 95.14, 4-27-95)

Sec. 13-9. Special election for initiative and referendum.

The city council by resolution may call a special election for initiative and referendum questions to be held on any date as may be provided by law.
(Ord. No. 97.30, 5-1-97)

Chapter 13A

ENVIRONMENTAL PROGRAMS AND STANDARDS

ARTICLE I. FIREPLACE RESTRICTIONS

Sec. 13A-1. Purpose.

The purpose of this article is to regulate the emissions standards for fireplaces, woodstoves and other solid-fuel burning devices to reduce the amount of air pollution caused by particulate matter and carbon monoxide.
(Ord. No. 97.67, 12-11-97)

Sec. 13A-2. Applicability.

This article applies to all fireplaces, woodstoves and other solid-fuel burning devices constructed or installed after December 31, 1998.
(Ord. No. 97.67, 12-11-97)

Sec. 13A-3. Definitions.

For purposes of this article, the following words and terms shall have the meaning ascribed thereto:

Fireplace means a built in place masonry hearth and fire chamber or a factory-built appliance, designed to burn solid fuel or to accommodate a gas or electric log insert or similar device, and which is intended for occasional recreational or aesthetic use, not for cooking, heating, or industrial processes.

Solid fuel means and includes, but is not limited to, wood, coal, or other nongaseous or nonliquid fuels, including those fuels defined by the Maricopa County Air Pollution Control Officer as "inappropriate fuel" to burn in residential woodburning devices.

Woodstove means a solid-fuel burning heating appliance including a pellet stove, which is either freestanding or designed to be inserted into a fireplace.
(Ord. No. 97.67, 12-11-97)

Sec. 13A-4. Installation restrictions.

(a) On or after December 31, 1998, no person, firm or corporation shall construct or install a fireplace or a woodstove, and the community development department shall not approve or issue a permit to construct or install a fireplace or a woodstove, unless the fireplace or woodstove complies with one of the following:

(1) A fireplace which has a permanently installed gas or electric log insert;

(2) A fireplace, woodstove or other solid-fuel burning appliance which has been certified by the United States Environmental Protection Agency as conforming to 40 Code of Federal Regulations Part 60, Subpart AAA as in effect on July 1, 1990;

(3) A fireplace, woodstove or other solid-fuel burning appliance that has been tested and listed by a nationally recognized testing agency to meet performance standards equivalent to those adopted by 40 Code of Federal Regulations Part 60, Subpart AAA as in effect on July 1, 1990;

(4) A fireplace, woodstove or other solid-fuel burning appliance that has been determined by the Maricopa County Air Pollution Control Officer to meet performance standards equivalent to those adopted by 40 Code of Federal Regulations Part 60, Subpart AAA as in effect on July 1, 1990; or

(5) A fireplace that has a permanently installed woodstove insert that complies with subparagraphs 2, 3 or 4 above.

(b) The following installations are not regulated and are not prohibited by this article:

(1) Furnaces, boilers, incinerators, kilns and other similar space heating or industrial process equipment;

(2) Cookstoves, barbecue grills and similar appliances designed primarily for cooking; and

(3) Fire pits, barbecue grills and other outdoor fireplaces.

(Ord. No. 97.67, 12-11-97; Ord. No. 2010.02, 2-4-10)

Sec. 13A-5. Fireplace or woodstove alterations.

(a) Fireplaces constructed or installed on or after December 31, 1998, that contain a gas or electric log insert or a woodstove insert, shall not be altered to directly burn wood or any other solid fuel.

(b) On or after December 31, 1998, no person, firm or corporation shall alter a fireplace, woodstove or other solid fuel burning appliance in any manner that would void its certification or operational compliance with the provisions of this article.

(Ord. No. 97.67, 12-11-97)

Sec. 13A-6. Permits required.

(a) In addition to the provisions and restrictions of this article, construction, installation or alteration of all fireplaces, woodstoves and other gas, electric or solid-fuel burning appliances and equipment shall be done in compliance with the provisions of the city's codes and ordinances and shall be subject to the permits and inspections required by those codes and ordinances.

(b) Fireplaces constructed or installed on or after December 31, 1998, shall not be altered without first obtaining a permit from the community development department to insure compliance with this article.
(Ord. No. 97.67, 12-11-97; Ord. No. 2010.02, 2-4-10)

Sec. 13A-7. Use restrictions.

Fireplaces and woodstoves shall not be used during any high pollution advisory day forecast for particulate matter or restricted burn period declared by the county.
(Ord. No. 2008.14, 4-3-08)

Secs. 13A-8—13A-24. Reserved.

ARTICLE II. OUTDOOR FIRES

Sec. 13A-25. Purpose.

The purpose of this article is to regulate outdoor fires to reduce the amount of air pollution caused by particulate matter and to improve air quality.
(Ord. No. 2008.14, 4-3-08)

Sec. 13A-26. Applicability.

This article applies to fire pits and other outdoor fires.
(Ord. No. 2008.14, 4-3-08)

Sec. 13A-27. Outdoor fire restrictions.

(a) From May 1 through September 30 each year it is unlawful for any person to ignite, cause to be ignited, permit or allow to be ignited, any outdoor fire.

(b) No outdoor fire may be ignited or maintained during any high pollution advisory day forecast for particulate matter or restricted burn period declared by the county.

(c) The restrictions in subsections (a) and (b) may be varied only by the exceptional circumstances listed in A.R.S. § 49-501 or through a permit issued by the state or its delegated authority under A.R.S. § 49-501.

(d) Wood-burning in outdoor fires is prohibited at all times on city property, including city parks, unless permitted under § 5-2, chapter 23, or other authority of the Tempe City Code.
(Ord. No. 2008.14, 4-3-08)

Secs. 13A-28—13A-49. Reserved.

ARTICLE III. DUST CONTROL

Sec. 13A-50. Purpose.

The purpose of this article is to improve air quality by regulating practices that contribute to the air pollution caused by particulate matter.
(Ord. No. 2008.14, 4-3-08)

Sec. 13A-51. Definitions.

For purposes of this article, the following words and terms shall have the meaning ascribed thereto:

Leaf blower means a device that generates a stream of air to move landscape debris.

Motor vehicle means a self-propelled conveyance, including vehicles designed for use on roadways and those designed for off-road use.

Particulate matter means fine dust particles that contribute to air pollution and can harm human health.

Person means any public or private corporation, company, partnership, firm, association or society of persons, the federal government and any of its departments or agencies, the state and any of its agencies, departments or political subdivisions, as well as a natural person.

PM-10 means particulate matter less than ten microns in diameter, a component of fugitive dust emissions from unpaved and unstabilized surfaces.

Public roadway means a street, alley, road, highway or thoroughfare that is used by the public or is open to public use for vehicular travel, including roadways in gated communities.

Stabilized surface means a surface that has been treated with asphaltic concrete, cement concrete, hardscape, brick, decomposed granite cover, crushed granite cover, vehicular duty pavers, penetration treatment of bituminous material and seal coat of bituminous binder and a mineral aggregate, gravel cover, grass or other continuous vegetative cover, or other means of stabilization approved by the city.
(Ord. No. 2008.14, 4-3-08; Ord. No. 2010.27, 7-1-10)

Sec. 13A-52. Leaf blower use restrictions.

(a) No person may use a leaf blower to blow leaves, grass cuttings, other landscape debris, trash, soil or dust into a public roadway.

(b) No person may operate a leaf blower except on surfaces that have been stabilized.

(c) No person may operate a leaf blower during any high pollution advisory day forecast for particulate matter.

(d) These restrictions are subject to enforcement by the county under A.R.S. § 49-457.01 and by the city's designated dust control inspectors in accordance with § 13A-56 of this article. (Ord. No. 2008.14, 4-3-08; Ord. No. 2010.27, 7-1-10)

Sec. 13A-53. Repealed.
(Ord. No. 2008.14, 4-3-08; Ord. No. 2010.27, 7-1-10)

Sec. 13A-54. Requirements to stabilize vehicle use areas.

(a) Motor vehicle parking, maneuvering, ingress and egress areas shall be stabilized at all developments other than residential buildings with four or fewer units.

(b) Motor vehicle parking, maneuvering, ingress and egress areas at residential buildings with four (4) or fewer units shall be stabilized if the vehicle use areas total three thousand (3,000) square feet or more in size.

(c) Owners of vacant land shall control dust emissions by stabilizing any unpaved area or by installing and maintaining physical barriers approved by the city to prevent vehicle access.

(d) This section will be administered and enforced by the community development director or designee pursuant to the provisions of chapter 21, article III of the Tempe City Code.

(Ord. No. 2008.14, 4-3-08; Ord. No. 2010.27, 7-1-10)

Sec. 13A-55. Repealed.
(Ord. No. 2008.14, 4-3-08; Ord. No. 2010.27, 7-1-10)

Sec. 13A-56. Violations.

(a) Violations of this article are subject to enforcement as provided in A.R.S. § 49-513 and Maricopa County Air Pollution Control Regulations § 300.

(b) The city may enter and inspect property subject to regulation under this article as necessary to determine compliance with this article.

(c) When the public works director or designee finds that a person has violated, or continues to violate, any provision of this article, or an order issued hereunder, the director may serve upon that person a written notice of violation. The director's notice will require the person within ten (10) working days of the receipt of the notice, to provide in writing to the director an explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific actions to be taken by the person to prevent subsequent violations. Submission of this plan does not relieve the person of liability for any violations in the notice or that occurred before or after receipt of the notice of violation, and does not limit the director's authority to take further enforcement actions. Nothing in this section shall limit the authority of the public works director or designee to take any action, including emergency actions or any other enforcement actions, without first issuing a notice of violation. In appropriate situations, the public works director or designee may notify the person orally either in person or by telephone prior to, and in some cases in lieu of, written notification.

(d) Any condition caused or permitted to exist in violation of any of the provisions of this article constitutes a threat to the public health, safety, and welfare, and is deemed a nuisance that may be summarily abated at the owner's expense, and is subject to a civil action to abate, enjoin, or otherwise compel the cessation of the nuisance.

(e) The remedies listed herein are not exclusive of any other remedies available under applicable federal, state, and local laws, and the city may, in its discretion, seek cumulative remedies. The city may recover its attorney's fees, court costs, and other expenses associated with enforcement of this article.

(f) If the public works director or designee issues a notice of violation for a provision of this article and makes a prima facie showing that the conduct or events giving rise to the violation are likely to have continued or recurred past the date of notice, the public works director or designee may request the county attorney to file an action in superior court to recover penalties provided for in A.R.S. § 49-513.

(g) This article is not intended to modify or repeal any other ordinance, rule, regulation, or other provision of law. The requirements of this article are in addition to the requirements of any other ordinance, rule, regulation, or other provision of law, and where any provision of this article imposes restrictions different from those imposed by any other ordinance, rule, regulation, or other provision of law, whichever provision is more restrictive or imposes higher protective standards for human health or the environment shall control.
(Ord. No. 2008.14, 4-3-08; Ord. No. 2010.27, 7-1-10)

Chapter 14

FIRE PREVENTION AND PROTECTION[1]

ARTICLE I. IN GENERAL

Sec. 14-1. Fire medical rescue department established.

There is hereby established for the city a fire medical rescue department.
(Code 1967, § 14-1; Ord. No. O2014.14, 3-20-14)

State law reference—Firemen's relief and pension fund, A.R.S. § 9-951 et seq.

Secs. 14-2—14-15. Reserved.

ARTICLE II. FIRE PREVENTION CODE

DIVISION 1. GENERALLY

Sec. 14-16. Adopted; where filed.

That certain document known as the International Fire Code, 2006 Edition, which has been published in book form by the International Code Council, Inc. (ICC), together with appendix chapters B, C, E, F and G, three (3) copies of which are on file in the office of the city clerk, and this same code is hereby referred to, adopted and made a part hereof, as if fully set out in this article. (Permit and Inspection fees set by resolution - see Appendix)
(Code 1967, § 14-4; Ord. No. 87.01, § 1, 2-12-87; Ord. No. 89.62, § 1, 1-11-90; Ord. No. 99.26, 8-19-99; Ord. No. 2006.02, 2-16-06; Ord. No. 2009.04, 3-5-09)

Charter reference—Adoption by reference, § 2.14.
State law reference—Adoption by reference, A.R.S. § 9- 801 et seq.

Sec. 14-17. Enforcement; annual report.

(a) The fire prevention code adopted by this article shall be enforced by the fire medical rescue department of the city, under the supervision of the chief of the fire medical rescue department.

(b) The fire medical rescue department chief may detail such members of the fire medical rescue department as fire prevention inspectors as shall from time to time be necessary. The chief of the fire medical rescue department shall recommend to the city manager the employment of technical inspectors when necessary.

[1] **Cross reference**—Buildings and building regulations, Ch. 8.
State law reference—Fire Prevention powers of city, A.R.S. §§ 9-240(B)(7), 9-276(A)(15).

(c) A report on fire prevention activities shall be made annually and transmitted to the city manager.
(Code 1967, § 14-7; Ord. No. O2014.14, 3-20-14)

Secs. 14-18—14-20. Reserved.

Editor's note—§§ 14-18—14-20, pertaining to storage of explosives and blasting agents, storage of flammable liquids in outside aboveground tanks, and new bulk plants for flammable or combustible liquids, and derived from §§ 14-8—14-10 of the city's 1967 code, were repealed by § 2 of Ord. No. 87.01, adopted Feb. 12, 1987.

Sec. 14-21. Modifications.

The chief of the fire medical rescue department shall be authorized to determine the specific applicability of the fire prevention code adopted by this article when there are practical difficulties in carrying out the strict letter of the code, upon written application that a practical difficulty exists; provided, that the spirit of the code shall be observed, public safety secured and substantial justice done. The particulars of such modification, when granted or allowed, and the decision of the chief of the fire medical rescue department thereon, shall be entered upon the records of the fire medical rescue department, and assigned copy shall be furnished the applicant.
(Code 1967, § 14-12; Ord. No. 2014.14, 3-20-14)

Sec. 14-22. Appeals.

Whenever the chief of the fire medical rescue department shall disapprove an application or refuse to grant a permit applied for, or when it is claimed that the provisions of the fire prevention code adopted by this article do not apply or that the true intent and meaning of the code have been misconstrued or wrongly interpreted, the applicant may appeal from the decision of the chief of the fire medical rescue department to the city manager within thirty (30) days from the date of the decision appealed.
(Code 1967, § 14-13; Ord. No. 2014.14, 3-20-14)

Sec. 14-23. Determination of need for additional permits.

The city manager, the chief of the fire medical rescue department and the community development director shall act as a committee to determine and specify, after giving affected persons an opportunity to be heard, any new materials, processes or occupancies which shall require permits, in addition to those now enumerated in the fire prevention code adopted by this article.
(Code 1967, § 14-14; Ord. No. 97.20, 4-10-97; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10; Ord. No. 2014.14, 3-20-14)

Sec. 14-24. Conflicting provisions.

Nothing in the fire prevention code adopted by this article shall be construed to prevent the enforcement of other laws which prescribe more restrictive limitations, nor shall the permissive provisions of the fire prevention code be presumed to waive limitations imposed by other statutes or ordinances of the city or the state.
(Code 1967, § 14-15)

Sec. 14-25. Violation; penalty.

Any person who shall violate any of the provisions of the fire prevention code adopted by this article or fail to comply therewith, or who shall violate or fail to comply with any order made under such code, or who shall build in violation of any detailed statement of specifications or plans submitted and approved under such code or any certificate or permit issued under such code, shall severally, for each violation and noncompliance respectively, be punishable as provided in § 1-7. The imposition of one penalty for any violation shall not excuse the violation or permit it to continue; and all such persons shall be required to correct or remedy such violations or defects forthwith. Each day that prohibited conditions are maintained shall constitute a separate offense.
(Code 1967, § 14-16)

Secs. 14-26—14-40. Reserved.

DIVISION 2. FIRE CODE AMENDMENTS

Sec. 14-41. Legal status.

The provisions of this division are amendments to the International Fire Code as now or hereafter adopted in § 14-16. All sections, chapters, etc., in this division other than this section shall be considered to be both a part of this code and a part of the International Fire Code.
(Ord. No. 2009.04, 3-5-09)

Sec. 105. Permits.

Section 105.1.1 is hereby amended as follows:

105.1.1. Permits required. The fire code official may require permits as provided for in Section 105. Permit fees, if any, shall be paid prior to issuance of the permit. Issued permits shall be kept on the premises designated therein at all times and shall be readily available for inspection by the fire code official.

Section 105.2.3 is hereby amended as follows:

105.2.3. Time limitation of application. An application for a permit for any purposed work or operation shall be deemed to a have been abandoned one year after the date of filing. The fire code official is not authorized to grant any extension of time.

EXCEPTIONS:

1. Prior to the date of expiration of any application that has not been approved for the issuance of permits, an applicant may submit a written request for one time extension of a ninety (90) days. The request must explain the justifiable cause for the delay and include a proposed plan submittal schedule for completion of the plan review process. If the request for extension is approved, the applicant must submit a new project submittal application form along with a renewal fee equal to thirty-five percent (35%) of the original calculated fire permit fee. The renewal fee must be paid no later than thirty (30) business days after the original expiration date or the original application shall expire. Additionally,

all permits must be issued and permit fees paid prior to the end of the ninety (90) day extension date.

2. Prior to the date of expiration of any application that has been approved for the issuance of permits, but for which a permit has not been issued, the applicant may request a one time extension of one-hundred eighty (180) days. The request must explain the justifiable cause for the delay. If the request for extension is approved, the applicant must submit a new project submittal application along with a renewal fee equal to ten percent (10%) of the original calculated fire permit fee. The renewal fee must be paid no later than thirty (30) business days after the original expiration date or the original application shall expire. Additionally, all permits must be issued and permit fees paid prior to the end of the one-hundred eighty (180) day extension date.

(FPN): Exceptions one and two above may not be combined.
(Ord. No. 2009.04, 3-5-09)

Sec. 108. Board of appeals.

Section 108 is hereby repealed.
(Ord. No. 2009.04, 3-5-09)

Sec. 109. Violations.

Section 109.3 is hereby amended as follows:

109.3. Violation penalties. Persons who shall violate a provision of this code or shall fail to comply with any of the requirements thereof or who shall erect, install, alter, repair or do work in violation of the approved construction documents or directive of the fire code official, or of a permit or certificate used under provisions of this code, shall be guilty of a class 1 misdemeanor punishable by a fine of not more than two thousand five hundred dollars ($2,500.00) or by imprisonment not exceeding ninety (90) days or both such fine and imprisonment. Each day that a violation continues after due notice has been served shall be deemed a separate offense.
(Ord. No. 2009.04, 3-5-09)

Sec. 111. Stop work order.

Section 111.4 is hereby amended as follows:

111.4. Failure to comply. Any person who shall continue any work after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be subject to the violation penalties specified in Section 109.3.
(Ord. No. 2009.04, 3-5-09)

Sec. 202. General definitions.

Section 202 is hereby amended as follows:

FIREFIGHTER BREATHING AIR SYSTEM. A firefighter breathing air system is a complete, self-contained high pressure breathing air replenishment system consisting of a fire department air connection panel, remote air fill panels and high pressure interconnected piping, permanently installed within a structure which allows fire medical rescue department personnel to replenish empty self-contained breathing apparatus cylinders at, or within close proximity to, the location of an emergency incident, thus reducing the amount of travel distance, time and support personnel needed at the location.

OCCUPANCY CLASSIFICATION, Factory Industrial F-1 Moderate-Hazard Occupancy is hereby amended as follows:

Woodworking (cabinet) (establishments with more than three (3) woodworking appliances.)

OCCUPANCY CLASSIFICATION, Group I-1 is hereby amended as follows:

Group I-1. This occupancy shall include buildings, structures or parts thereof housing more than ten (10) persons, on a twenty-four (24) hour basis, who because of age, mental disability or other reasons, live in a residential environment that provides personal care and/or supervisory care services. The occupants are capable of responding to an emergency situation without physical assistance from staff. This group shall include, but not be limited to, the following:

Residential board and care facilities
Assisted living centers
Halfway houses
Group homes
Congregate care facilities
Social rehabilitation facilities
Alcohol and Drug abuse treatment centers
Convalescent facilities

A facility such as the above with five (5) or fewer persons, excluding staff, shall be classified as Group R-3 and shall comply with the International Residential Code in accordance with Section 101.2. A facility such as the above housing at least six (6) but not more than ten (10) persons, excluding staff, shall be classified as a Group R-4.

OCCUPANCY CLASSIFICATION, Group I-2 is hereby amended as follows:

Group I-2. This occupancy shall include buildings and structures used for medical, surgical, psychiatric, nursing, custodial, personal, or directed care on a twenty-four (24) hour basis of persons who are not capable of self-preservation by responding to an emergency situation without physical assistance from staff. This group shall include, but not be limited to, the following:

Hospitals
Nursing homes (both intermediate-care facilities and skilled nursing facilities)
Mental hospitals (where patients are not restrained)
Detoxification facilities

OCCUPANCY CLASSIFICATION, Residential Group R is hereby amended as follows:

R-1 Residential occupancies where the occupants are primarily transient in nature, including:

Boarding houses
Hotels
Motels

R-2 Residential occupancies containing sleeping units or more than two (2) dwelling units where the occupants are primarily permanent in nature, including:

Apartment houses
Convents
Dormitories
Fraternities and sororities
Monasteries
Vacation timeshare properties

Fraternity and sorority houses are any building used in whole or in part as a dwelling and occupied by and maintained exclusively or primarily for college, university or professional school students who are affiliated with a social, honorary or professional organization recognized currently or in the past by a college, university or professional school.

R-3 Residential occupancies where the occupants are primarily permanent in nature and not classified as R-1, R-2, R-4 or I and where buildings do not contain more than two (2) dwelling units, or adult care and child care facilities that provide accommodation for five (5) or fewer persons, excluding staff, of any age. Adult care and child care facilities that are within a single-family home are permitted to comply with the International Residential Code.

R-4 Residential occupancies shall include buildings arranged for occupancy as residential care/assisted living facilities including at least six (6) but not more than ten (10) occupants, excluding staff.

Group R-4 occupancies shall meet the requirements for construction as defined for Group R-3 except as otherwise provided for in this code or shall comply with the International Residential Code.

PERSONAL CARE SERVICE. The care of residents who do not require chronic or convalescent medical or nursing care. Personal care involves assistance with activities of daily living that can be performed by persons without professional skills or professional training and includes the coordination or provision of intermittent nursing services, the administration of medications and treatments, and responsibility for the safety of the residents while inside the building.

RESIDENTIAL CARE/ASSISTED LIVING FACILITY. A building or part thereof housing at least six (6) but not more than ten (10) persons, excluding staff, on a twenty-four (24) hour basis, who because of age, mental disability or other reasons, live in a supervised residential environment which provides supervisory and/or personal care services. The occupants are capable of responding to an emergency situation without physical assistance from staff. This classification shall include, but not be limited to, the following: residential board and care facilities, assisted living homes, halfway houses, group homes, congregate care facilities, social rehabilitation facilities, alcohol and drug abuse treatment centers and convalescent facilities.

SUPERVISORY CARE SERVICE. General supervision, including daily awareness of resident functioning and continuing needs.
(Ord. No. 2009.04, 3-5-09; Ord. No. O2014.14, 3-20-14)

Sec. 308. Open flames.

Section 308.3.1 is hereby amended as follows:

308.3.1. Open-flame cooking devices. Charcoal burners and other open-flame devices shall not be operated on balconies/patios or within ten (10) feet (3048 mm) of combustible construction in Group R-1 or R-2 occupancies.

Section 308.3.1.1 is hereby amended as follows:

308.3.1.1. Liquefied-petroleum-gas-fueled cooking devices. LP-gas burners having an LP-gas container with a water capacity greater than two and one-half (2.5) pounds [nominal 1 pound (0.454 kg) LP-gas capacity] shall not be operated on balconies/patios or within ten (10) feet (3048 mm) of combustible construction in Group R-1 or R-2 occupancies.
(Ord. No. 2009.04, 3-5-09)

Sec. 505. Premises identification.

Section 505.1 is hereby amended as follows:

505.1. Address numbers. Approved numbers or addresses shall be provided for new and existing buildings in accordance with the Tempe Building Safety Administrative Code.
(Ord. No. 2009.04, 3-5-09)

Sec. 803. Interior wall and ceiling finish and trim in existing buildings.

Section 803.4 is amended as follows:

803.4. Fire-retardant coatings. The required flame spread or smoke-developed classification of surfaces shall be permitted to be achieved by application of approved fire-retardant coatings, paints or solutions to surfaces having a flame spread rating exceeding that permitted. Such applications shall comply with NFPA 703 and the required fire-retardant properties shall be maintained or renewed in accordance with the manufacturer's instructions. Fire retardant coatings, paints or solutions shall be applied by personnel approved by the fire code official.
(Ord. No. 2009.04, 3-5-09)

Sec. 901. General.

Section 901.6 is hereby amended as follows:

901.6. Inspection, testing and maintenance. Fire detection, alarm, firefighter breathing air and extinguishing systems shall be maintained in an operative condition at all times, and shall be replaced or repaired where defective. Non-required fire protection systems and equipment shall be inspected, tested and maintained or removed.
(Ord. No. 2009.04, 3-5-09)

Sec. 903. Automatic sprinkler systems.

Section 903.2 is hereby repealed and new Section 903.2 is hereby adopted as follows:

903.2. Where required. Approved automatic sprinkler systems shall be provided in the locations described in this section.

903.2.1. New buildings or structures. All areas of new buildings or structures, and other locations required by this Chapter, shall be provided with an automatic fire sprinkler system complying with Section 903.3.1.1, 903.3.1.2 or 903.3.1.3 as applicable.

EXCEPTIONS: Unless the use of the facility otherwise requires automatic fire sprinkler protection, fire sprinkler systems shall not be required for the following:

1. R-3 occupancies of five thousand (5,000) square feet or less and other buildings or structures accessory to R-3 occupancies.

2. Detached non-combustible carports of five thousand (5,000) square feet or less in roof area.

3. Detached non-residential buildings of one thousand (1,000) square feet or less in floor area.

4. Detached non-combustible canopies less than five thousand (5,000) square feet in roof area used exclusively for vehicle washing facilities or vehicle fuel dispensing stations.

5. Shade canopies less than five thousand (5,000) square feet; not closer than five (5) feet to any building, property line or other shade canopy; and shading one of the following: vehicles for sale at a dealership, playground equipment, or outdoor eating areas without cooking.

6. Shipping containers used for storage purposes and not closer than five (5) feet to any building, property line or other container.

7. Exterior roofs, overhangs or canopies of Type I, II or III construction with no combustible storage beneath.

8. Exterior covered/enclosed walkways of Type I, II or III construction with enclosing walls that are at least fifty percent (50%) open.

This section is not intended to indicate all instances or circumstances where fire sprinkler systems are required; refer to this chapter and the Tempe Fire Code for other requirements.

Section 903.2.2. Group H-5 occupancies. An automatic sprinkler system shall be installed throughout buildings containing Group H-5 occupancies. The design of the sprinkler system shall not be less than that required by this code for the occupancy hazard classifications in accordance with Table 903.2.2. Where the design area of the sprinkler system consists of a corridor protected by one row of sprinklers, the maximum number of sprinklers required to be calculated is 13.

TABLE 903.2.2
GROUP H-5 SPRINKLER DESIGN CRITERIA

Location	**Occupancy Hazard Classification**
Fabrication areas	Ordinary Hazard Group 2
Service corridors	Ordinary Hazard Group 2
Storage rooms without dispensing	Ordinary Hazard Group 2
Storage rooms with dispensing	Extra Hazard Group 2
Corridors	Ordinary Hazard Group 2

903.2.3. Change of occupancy. An automatic sprinkler system complying with Section 903.3 shall be provided for an existing building or portion thereof undergoing a change of occupancy as follows, based upon the relative hazard levels indicated in Table 903.2.3:

1. When a change of occupancy is made to a higher level as shown in Table 903.2.3, the area or building shall be provided with an automatic fire sprinkler system.

2. When a change of occupancy is made within hazard level 1 as shown in Table 903.2.3, the area or building shall be provided with an automatic fire sprinkler system.

3. Any change of occupancy of a building or area of more than five thousand (5,000) square feet shall be retrofit with a fire sprinkler system.

TABLE 903.2.3
EXISTING BUILDING HAZARD LEVELS

Hazard Level	**Building Occupancy Type**
1 (highest)	H, I, R-1, R-2, R-4
2	A-2, A-5
3	A-1, A-3, A-4
4	E, F-1, M, S-1
5 (lowest)	B, F-2, S-2, U, R-3

Notes: Occupancies are as defined in this code.

When a change of occupancy of five thousand (5,000) square feet or less is made to a lower hazard level or within a hazard level (except hazard level 1), as shown in Table 903.2.3, the building is not required to be provided with an automatic fire sprinkler system.

903.2.4. Additions. All additions to existing buildings or structures and all buildings or structures that are expanded by an addition(s) shall be provided with an automatic fire protection system complying with Section 903.3 as applicable.

EXCEPTION: An existing non-sprinklered building or structure and additions to such existing building, provided the occupancy of the existing building is not changed, the addition is the same occupancy, and the total area of all such additions to the building do not exceed one thousand (1,000) square feet.

The above exception does not supersede other requirements of the Tempe Fire Code.

Section 903.2.5. Rubbish and linen chutes. An automatic sprinkler system shall be installed at the top of rubbish and linen chutes and in their terminal rooms. Chutes extending through three (3) or more floors shall have additional sprinkler heads installed within such chutes at alternate floors. Chute sprinklers shall be accessible for servicing.

903.2.6. During construction. Automatic sprinkler systems required during construction, alteration and demolition operations shall be provided in accordance with the Tempe Fire Code.

903.2.7. Ducts conveying hazardous exhausts. Where required by the Tempe Mechanical Code, automatic sprinklers shall be provided in ducts conveying hazardous exhaust, or flammable or combustible materials.

EXCEPTION: Ducts in which the largest cross-sectional diameter of the duct is less than ten (10) inches (254 mm).

*903.2.8. Commercial cooking operations***.** An automatic sprinkler system shall be installed in commercial kitchen exhaust hood and duct system where an automatic sprinkler system is used to comply with Section 904.

*903.2.9. Other required suppression systems***.** In addition to the requirements of Section 903.2, the provisions indicated in Table 903.2.13 also require the installation of a suppression system for certain buildings and areas

903.2.10. New buildings with unknown occupancy type or hazard classification. In new buildings constructed with an interior ceiling/deck height exceeding twenty (20) feet and the occupancy or hazard classification is unknown, the minimum fire sprinkler design criteria shall be .495/2000 sq. ft.

903.2.11. Existing fraternity and sorority houses. All new or existing structures, utilized, in whole or in part, as a fraternity or sorority house, as defined in Chapter 2, Section 202 of the fire code, shall be equipped with an automatic fire extinguishing system in accordance with the fire code. Existing fraternity and sorority houses shall come into compliance no later than twenty-four (24) months upon notification of requirements.

Section 903.3.1.2 is hereby amended as follows:

903.3.1.2. NFPA 13R sprinkler systems. Where allowed in multi-family buildings, and Group R, Division 4 occupancies, automatic sprinkler systems shall be installed throughout in accordance with NFPA 13R, provided there are no deletions of sprinklers in attics, bathrooms, closets (including those containing mechanical or electrical equipment), foyers, garages, carports, accessible areas under interior stairs and landings used for storage or living purposes.

Section 903.3.1.3 is hereby amended as follows:

903.3.1.3. NFPA 13D sprinkler systems. Where allowed, automatic sprinkler systems in one- and two- family dwellings shall be installed throughout in accordance with NFPA 13D, provided there are no deletions of sprinklers in attics, bathrooms, closets (including those containing mechanical or electrical equipment), foyers, garages, carports, accessible areas under interior stairs and landings used for storage or living purposes.

Section 903.3.6 is hereby amended as follows:

903.3.6. Hose threads. Fire hose threads used in connection with automatic sprinkler systems shall be approved and compatible with the Tempe fire medical rescue department hose threads.

Section 903.3.7 is hereby amended as follows:

903.3.7. Fire department connections. The location of fire department connections shall be approved by the Tempe fire marshal's authorized representative.
(Ord. No. 2009.04, 3-5-09; Ord. No. 2010.15, 6-24-10; Ord. No. O2014.14, 3-20-14)

Sec. 906. Portable fire extinguishers.

Section 906.1 is hereby amended as follows:

906.1. Where required. Portable fire extinguishers shall be installed in the following locations:

1. In all Group A, B, E, F, H, I, M, R-1, R-2, R-4 and S occupancies.

   EXCEPTION: In all Group A, B and E occupancies equipped throughout with quick-response sprinklers, fire extinguishers shall be required only in special-hazard areas.

2. Within thirty (30) feet (9144 mm) of commercial cooking equipment.

3. In areas where flammable or combustible liquids are stored, used or dispensed.

4. On each floor of structures under construction, except Group R-3 occupancies, in accordance with Section 1415.1.

5. Where required by the sections indicated in Table 906.1.

6. Special-hazard areas, including but not limited to laboratories, computer rooms and generator rooms, where required by the fire code official.

7. In Group R-2 occupancies, portable fire extinguishers may be installed in individual dwelling units.

(Ord. No. 2009.04, 3-5-09)

Sec. 907. Fire alarm and detection systems.

Section 907.2.10.1.2.1 is hereby added as follows:

907.2.10.1.2.1. Installation and maintenance. Approved single-station smoke detectors shall be installed in existing dwelling units, congregate residences, and hotel and lodging house guest rooms.

Smoke detectors shall be installed in all existing non-owner-occupied dwellings, dwelling units and in all apartment houses. The owner shall be responsible for the installation, replacing the battery annually (if battery operated), and maintaining appropriate records of required smoke detectors. Upon termination of a tenancy in any rental unit, the owner or owner's agent shall insure that any required smoke detectors are operational prior to re-occupancy of the unit. The occupant shall be responsible for periodic maintenance and reporting, in writing, to the owner or owner's agent of any operational defects of required smoke detectors.

Section 907.3 is hereby amended as follows:

907.3. Where required—retroactive in existing buildings and structures. An approved manual, automatic or manual and automatic fire alarm system shall be installed in existing buildings and structures no later than twenty-four (24) months upon notification of requirements in accordance with Sections 907.3.1 through 907.3.1.8. Where automatic sprinkler protection is provided in accordance with Sections 903.3.1.1 or 903.3.1.2 and connected to the building fire alarm system, automatic heat detection required by this section shall not be required. An approved automatic fire detection system shall be installed in accordance with the provisions of this code and NFPA 72. Devices, combinations of devices, appliances and equipment shall be approved. The automatic fire detectors shall be smoke detectors, except an approved alternative type of detector shall be installed in spaces such as boiler rooms where, during normal operation, products of combustion are present in sufficient quantity to actuate a smoke detector.

Section 907.3.1.1 is hereby amended as follows:

907.3.1.1. Group E. A fire alarm system shall be installed in existing Group E day care or child care occupancies in accordance with Section 907.2.3.

EXCEPTIONS:

1. A building with a maximum area of one thousand (1,000) square feet (93 m2) that contains a single classroom.

2. Group E day care or child care occupancies with an occupant load less than fifty (50).

3. Buildings with an automatic sprinkler system.

Section 907.3.1.5 is hereby amended as follows:

907.3.1.5. Group R-1 hotels and motels. A fire alarm system shall be installed in existing Group R-1 hotels and motels more than three stories and with more than twenty (20) guestrooms.

EXCEPTION: Buildings less than three (3) stories in height where all guestrooms, attics and crawl spaces are separated by 1-hour fire-resistance-rated construction and each guestroom exits directly to the exterior.

Section 907.3.1.7 is hereby amended as follows:

907.3.1.7. Group R-2. A fire alarm system shall be installed in existing Group R-2 occupancies more than three stories in height and with more than sixteen (16) dwelling units or sleeping units.

EXCEPTIONS:

1. Where each living unit is separated from other contiguous living units by fire barriers having a fire-resistance rating of not less than 0.75 hour, and where each living unit has its own independent exit directly to the exterior.

2. A separate fire alarm system is not required in buildings that are equipped throughout with an approved supervised automatic sprinkler system installed in accordance with Section 903.3.1.1 or 903.3.1.2 and having a local alarm to notify all occupants.

3. A fire alarm system is not required in buildings that do not have interior corridors serving dwelling units and are protected by an approved automatic sprinkler system installed in accordance with Section 903.3.1.1 or 903.3.1.2, provided that dwelling units either have a means of egress door opening directly to an exterior exit access that leads directly to the exits or are served by open ended corridors designed in accordance with Section 1022.6, Exception 4.

Section 907.3.1.8 is hereby amended as follows:

907.3.1.8. Group R-4. A fire alarm system shall be installed in existing Group R-4 residential care/assisted living facilities.

EXCEPTIONS:

1. Where there are interconnected smoke alarms meeting the requirements of Section 907.2.10.

2. Other manually activated, continuously sounding alarms approved by the fire code official.

(Ord. No. 2009.04, 3-5-09)

Sec. 915. Firefighter breathing air systems.

Section 915 is hereby added as follows:

915.1. Scope. The design, installation, and maintenance of firefighter breathing air systems shall be in accordance with this section.

915.2. Required installations. A firefighter breathing air system shall be installed in the following buildings:

1. Buildings classified as high-rise in accordance with the Building Code.

2. Underground buildings and structures, or components thereof, totaling ten thousand (10,000) square feet or more that is either more than two (2) floors below grade or more than thirty (30) feet below grade.

915.3. Permits and construction documents.

915.3.1. Permits. A fire permit is required to install, repair or modify a firefighter breathing air system.

915.3.2. Construction documents. Prior to the installation of a firefighter breathing air system, a minimum of two (2) sets of construction documents shall be submitted to the community development department for review and approval. Construction documents, special inspection forms, calculations, and other data shall be submitted in two (2) complete sets with each application for a permit. The construction documents shall be prepared by a design professional registered in Arizona. Construction documents shall be dimensioned and drawn upon suitable material. Construction documents shall be of sufficient clarity to indicate the location, nature and extent of the work proposed and show in detail that it will conform to the provisions of this code and relevant laws, ordinances, rules and regulations, as determined by the fire code official.

The plans submittal shall also include specifications for the tubing, fittings, and manufacturer data sheets for valves, pressure regulators, pressure relief devices, gauges, RIC universal air connections and cylinder filling hoses.

915.4. Contractor qualification. The firefighter breathing air system shall be installed by Arizona state licensed contractors. Proof of licensure shall be provided at the first inspection.

914.5. Design criteria.

914.5.1. The system shall be designed to at least one hundred twenty-five percent (125%) operating pressure.

914.5.2. The system shall be designed to fill, at each interior cylinder filling panel, one sixty-six (66) standard cubic foot compressed breathing air cylinder to a maximum pressure of four thousand five hundred (4,500) pounds per square inch gauge (psig).

915.5.3. The filling operation shall be completed in not more than two (2) minutes upon connection of the cylinder to the fill hose.

915.5.4. The minimum design flow of the breathing air piping system shall be calculated using two (2) interior cylinder filling panels operating simultaneously and located at the highest level above the fire department access.

915.6. Operating pressure. All components used in the system shall be rated to operate at a minimum pressure of five thousand (5,000) psig at seventy degrees (70° F).

915.7. Marking. System piping, gauges, valves and air outlets shall be clearly marked by means of steel or plastic labels or tags indicating their function. Markings used for piping systems shall consist of the content's name and include a direction of flow arrow. Markings shall be provided at each valve; at wall, floor or ceiling penetrations; at each change of direction; and at a minimum of every twenty (20) feet or fraction thereof throughout the piping system.

915.8. Exterior fire department connection panel and enclosure.

915.8.1. Location. A fire department connection panel shall be attached to the building or on a remote monument at the exterior of the building, at a location approved by the fire code official. The panel shall be secured inside of a weather resistant enclosure. The panel shall be within fifty (50) feet of an approved roadway or driveway, or other location approved by the fire code official. The enclosure shall be visible and accessible on approach to the building.

915.8.2. Construction. The fire department connection panel shall be installed in a cabinet constructed of minimum eighteen (18) gauge carbon steel, and shall be provided with coating to protect the cabinet from corrosion.

915.8.3. Vehicle protection. When the panel is located in an area subject to vehicle traffic, impact protection shall be provided in accordance with this code.

915.8.4. Enclosure marking. The front of the enclosure shall be marked "FIREFIGHTER AIR SYSTEM" on securely attached steel, plastic engraved or painted plate. The lettering shall be in a color that contrasts with the enclosure front and in letters that are a minimum of two (2) inches high with three-eighths (3/8) inch brush stroke. The marking of the enclosure shall be visible.

915.8.5. Enclosure components. The enclosure shall house a fire department connection panel containing the following components:

1. <u>One male rapid intervention crew/company universal air connection (RIC UAC) fitting.</u> When connected to a female fitting, the assembled UAC shall meet the construction, performance and dimensional requirements of NFPA 1981, *Standard on Open-Circuit Self-Contained Breathing Apparatus for Fire and Emergency Services 2007 Edition*.

2. <u>Two (2) pressure gauges.</u> The face of the pressure gauge shall be a minimum of two and one-half (2.5) inch diameter. The gauge shall have a pressure range of zero to ten thousand (0-10,000) psig and indicating units shall not be less than one hundred (100)

psig or greater than two hundred fifty (250) psig increments. One pressure gauge shall be provided and marked to indicate the fill pressure. One pressure gauge shall be provided and marked to indicate the system pressure.

3. One pressure regulator. One pressure regulator shall be installed between the RIC UAC fitting and the safety relief valve. The set pressure of the regulator shall not exceed the inlet pressure specified for the male RIC UAC fitting.

4. One spring-loaded safety relief valve. A spring-loaded safety relief valve shall be installed downstream of the pressure regulator inlet. The relief valve shall meet the requirements of the *ASME Boiler and Pressure Vessel Code, Section VIII, Unfired Pressure Vessels,* and shall not be field adjustable. The relief valve shall have a set-to-open pressure not exceeding 1.1 times the design pressure of the system.

5. One shutoff valve. The shutoff valve shall be installed upstream of the male RIC UAC connection and check valve.

6. One check valve. The check valve shall be installed between the male RIC UAC connection and the shutoff valve.

7. Instructions. Instructions explaining how to operate the shutoff valve shall be posted.

8. Tubing, fittings, adapters and supports. As required.

915.8.6. Security. To prevent unauthorized access to or tampering with the system, the fire department connection panel enclosure shall be maintained locked by an approved means.

915.8.7. Fire department key box. A fire department key box shall be provided adjacent to the fire department connection panel and enclosure. A key for the enclosure shall be provided in the key box.

915.9. Interior cylinder fill panels and enclosure.

915.9.1. Location. The panel shall be located a minimum of thirty-six (36) inches but not more than sixty (60) inches above the finished floor. Cylinder fill panels shall be installed in the interior of buildings as follows:

1. High rise buildings. An interior cylinder fill panel and enclosure shall be installed at an approved central location on floors of high rise buildings commencing on the third floor above grade and every third floor thereafter. In addition, if basements exist greater than two (2) floors below grade, the fill panels will commence on the grade level and every third below grade level thereafter.

2. Underground structures as defined by Section 915.2 An interior cylinder fill panel and enclosure shall be installed in approved locations on the grade level and every third below grade level thereafter.

915.9.2. Cabinet requirements. Each cylinder fill panel shall be installed in a cabinet constructed of minimum eighteen (18) gauge carbon steel. The depth of the cabinet shall not create an exit obstruction. With the exception of the shutoff valve, pressure gauges, fill hoses and ancillary components, no system components shall be visible and shall be contained behind a minimum eighteen (18) gauge interior panel.

915.9.3. Door. Hinges for the cabinet door shall be located inside of the cabinet. The door shall be arranged such that when the door is open, it does not reduce the required exit width or create an obstruction in the path of egress.

915.9.4. Cabinet marking. The front of each cylinder fill panel shall be marked "FIREFIGHTER AIR SYSTEM." The lettering shall be in a color that contrasts with the cabinet front and in letters that are a minimum of two (2) inches high with three-eighths (3/8) inch brush stroke. The marking of the cabinet shall be visible to emergency response personnel.

915.9.5. Cabinet components. The cabinet shall be of sufficient size to allow for the installation of the following components:

1. <u>One shutoff valve.</u> Shutoff valve to be located between the cylinder fill panel and the main compressed air riser. It is permissible to locate this shutoff valve outside of the cylinder fill panel.

2. <u>Two (2) pressure gauges</u>. The face of each pressure gauge shall be a minimum two and one-half (2.5) inch diameter. The gauge shall have a pressure range of zero to ten thousand (0-10,000) psig and indicating units shall not be less than one hundred (100) psig or greater than two hundred fifty (250) psig increments. One pressure gauge shall be provided and marked to indicate the fill pressure on the four thousand five hundred (4,500) psig connections.

3. <u>One pressure regulator.</u> One regulator shall be installed between the safety relief valve and the four thousand five hundred (4,500) psig fill connection. The set pressure of the regulator shall not exceed the discharge pressure specified for the RIC UAC fitting.

4. <u>One spring-loaded safety relief valve.</u> A spring-loaded safety relief valve shall be installed downstream of the four thousand five hundred (4,500) psig pressure regulator inlet. The relief valve shall meet the requirements of the *ASME Boiler and Pressure Vessel Code, Section VIII, Unfired Pressure Vessels,* and shall not be field adjustable. The relief valve shall have a set to open pressure not exceeding 1.1 times the design pressure of the system.

5. <u>Four (4) four thousand five hundred (4,500) psig self-contained breathing apparatus (SCBA) fill hoses with RIC UAC fittings.</u> When protective caps are provided, they shall be equipped with a retainer so the cap cannot be disconnected from the hose.

6. <u>Tubing, fittings, adapters and supports</u>. As required.

915.9.6. Cylinder filling hose. The design of the cabinet shall provide a means for storing the hose to prevent kinking. When the hose is coiled, the brackets shall be installed so that the hose bend radius is maintained at four (4) inches or greater. The discharge outlet of each cylinder filling hose shall have a female RIC UAC. The female fitting shall be designed to connect to a male RIC UAC. The assembled RIC UAC shall meet the construction, performance and dimensional requirements of NFPA 1981, Standard on Open Circuit Self-Contained Apparatus for Fire and Emergency Services, 2002 Edition, Section 6.4.

915.9.7. Security. To prevent unauthorized access to or tampering with the system, each panel cover shall be maintained locked by an approved means.

915.10. Installation of components.

915.10.1. Pressure monitoring switch. An electric low pressure monitoring switch shall be installed in the piping system to monitor the air pressure. The pressure switch shall be connected to the building's fire alarm system. The pressure switch shall transmit a supervisory signal when the pressure of the breathing air system is less than three thousand (3,000) psig at seventy degrees (70° F) plus one hundred (100) psig. If the building is not equipped with a fire alarm system, activation of the pressure switch shall activate an audible alarm located at the building's main entrance. A weather resistant sign shall be provided adjacent to the audible alarm stating "FIREFIGHTER AIR SYSTEM – LOW AIR PRESSURE ALARM." The lettering shall be in a contrasting color and the letters shall be a minimum of two (2) inches high with three-eighths (3/8) inch brush stroke.

915.10.2. Tubing. Piping shall be constructed of stainless steel or other approved materials that are compatible with breathing air. The use of nonmetallic materials shall be compatible with breathing air. When stainless steel tubing is used, it shall meet ASTM A-269, Grade 316 or an equal standard. Stainless steel fitting shall be a minimum .375 outside diameter x .065 wall 316 fully annealed seamless. Stainless steel fittings shall be at least Grade 316 and meet the requirements of ASTM A-479 or equal. Routing of tubing and bends shall be such as to protect the tubing from mechanical damage. When piping must pass through a fire-rated assembly or other solid material, the piping shall be protected by a schedule 40 steel sleeve that is at least three (3) times the pipe diameter extending at twelve (12) inches past the assembly. Both ends of the sleeve shall be filled with an approved non-intumescent fire stop material.

915.10.3. Support. Piping shall be supported at maximum intervals of five (5) feet. Individual tubing clamps and mounting components shall be mechanically secured to the building support-members in accordance with manufacturers specifications.

915.10.4. Fittings. Fittings shall be constructed of stainless steel or other approved materials that are compatible with breathing air. The use of nonmetallic materials shall be compatible with breathing air. Stainless steel fittings shall be at least Grade 316 and meet the requirements of ASTM A-479 or an equal standard.

915.10.5. Prohibition. The use of carbon steel, iron pipe, malleable iron, high strength gray iron, or alloy steel is prohibited.

915.11. System assembly requirements. The system shall be an all welded system except where the tubing joints are readily accessible and at the individual air fill panels. When mechanical high-pressure tube fittings are used, they shall be approved for the type of materials to be joined and rated for the maximum pressure of the system. Welding procedures shall meet nationally recognized standards of good practice. Prior to and during the welding of sections of tubing, a continuous, regulated dry nitrogen or argon purge at three (3) psig shall be maintained to eliminate contamination with products of the oxidation or welding flux. The purge shall commence a minimum of two (2) minutes prior to welding operations and continue until the welded joint is at an ambient temperature of sixty degrees (60° F) to eighty degrees (80° F).

915.12. Prevention of contamination. The installing contractor shall ensure that, at all times, the system components are not exposed to contaminants, including but not limited to, oils, solvents, dirt and construction materials. When contamination of system components has occurred, the affected component shall not be installed in the system.

915.13. Testing and inspection.

915.13.1. Testing. Following the initial fabrication, assembly, and installation of the piping distribution system, exterior connection panel and interior cylinder fill panels, the fire medical rescue department shall witness the pneumatic testing of the complete system at a minimum test pressure of five thousand five hundred (5,500) psi using oil free dry air, nitrogen or argon. A minimum twenty-four (24) hour pneumatic or hydrostatic test shall be performed. During this test, all fittings, joints and system components shall be inspected for leaks. A solution compatible with the system component materials shall be used on each joint and fitting. Any defects in the system or leaks detected shall be documented on an inspection report, repaired or replaced. A test of the low pressure monitoring switch shall be performed. Each air fill panel shall be tested for compatibility with the fire medical rescue department's SCBA RIC UAC. The pipe or tubing manufacturer mill report shall be provided to the fire medical rescue department.

915.13.2. A minimum of two (2) samples shall be taken from separate air fill panels and submitted to an independent certified gas analysis laboratory to verify the system’s cleanliness and that the air is certified as breathing air. The laboratory shall submit a written report of the analysis to the fire medical rescue department documenting that the breathing air complies with this section.

915.13.3. During the period of air quality analysis, the air fill panel inlet shall be secured so that no air can be introduced into the system and each air fill panel shall be provided with a sign stating “AIR QUALITY ANALYSIS IN PROGRESS, DO NOT FILL OR USE ANY AIR FROM THIS SYSTEM.” This sign shall be a minimum of eight and one half (8-1/2) inches by eleven (11) inches with minimum of one inch lettering.

915.13.4. Special inspection. Prior to the final acceptance of the firefighter breathing air system, the building owner shall provide for the special inspection, testing and certification of the system. Special inspections shall be administered as required by Section 1704 of the International Building Code. At a minimum, the inspections shall include verifying the system's compatibility with the fire medical rescue department's SCBA apparatus, the system's ability to maintain five thousand (5,000) psi working pressure, the operability of the low pressure monitoring switch and that the system's air quality complies with the requirements of Section 915.12. Prior to final acceptance, the building owner shall provide the fire medical rescue department with written

verification of a testing and certification contract. Upon satisfactory completion of all city fire code inspections, special inspection, tests, and verification of air quality, the system shall be considered complete.

915.14. Annual maintenance inspections. The breathing air within the system shall be inspected at least annually in accordance with this section. As part of the inspection, one air sample shall be taken and certified as breathing air in accordance with this section. The laboratory test results shall be maintained onsite and readily available for review by the fire medical rescue department.
(Ord. No. 2009.04, 3-5-09; Ord. No. 2010.02, 2-4-10; Ord. No. O2014.14, 3-20-14)

Sec. 1007. Accessible means of egress.

Section 1007.6.2 is hereby amended as follows:

1007.6.2. Separation. Each area of refuge shall be separated from the remainder of the story by a smoke barrier complying with Section 709 of the International Building Code or a horizontal exit complying with Section 1021. Each area of refuge shall be designed to minimize the intrusion of smoke.

EXCEPTIONS:

1. Areas of refuge located within a vertical exit enclosure.

2. Areas of refuge where the areas served by the area of refuge are equipped throughout with an automatic sprinkler system installed in accordance with Section 903.3.1.1 or 903.3.1.2.

(Ord. No. 2009.04, 3-5-09)

Sec. 1008. Doors, gates and turnstiles.

Section 1008.1.4 is hereby amended as follows:

1008.1.4. Floor elevation. There shall be a floor or landing on each side of a door. Such floor or landing shall be at the same elevation on each side of the door. Landings shall be level except for exterior landings, which are permitted to have a slope not to exceed 0.25 unit vertical in twelve (12) units horizontal (two percent (2 %) slope).

EXCEPTIONS:

1. Doors serving individual dwelling units in Groups R-2 and R-3 where the following apply:

    1.1. A door is permitted to open at the top step of an interior flight of stairs, provided the door does not swing over the top step.

    1.2. Screen doors and storm doors are permitted to swing over stairs or landings.

2. Exterior doors as provided for in Section 1003.5, Exception 1, and Section 1018.2, which are not on an accessible route.

3. In Group R-3 occupancies not required to be Accessible units, Type A units or Type B units, the landing at an exterior doorway shall not be more than seven and three quarters (7.75) inches (197 mm) below the top of the threshold, provided the door, other than an exterior storm or screen door, does not swing over the landing.

4. Variations in elevation due to differences in finish materials, but not more than one-half (0.5) inch (12.7 mm).

5. Exterior decks, patios or balconies that are part of Type B dwelling units, have impervious surfaces and that are not more than four (4) inches (102 mm) below the finished floor level of the adjacent interior space of the dwelling unit, provided the door, other than an exterior storm or screen door, does not swing over the landing.

Section 1008.1.8.3 is hereby amended as follows:

1008.1.8.3. Locks and latches. Locks and latches shall be permitted to prevent operation of doors where any of the following exists:

1. Places of detention or restraint.

2. In buildings in occupancy Group A having an occupant load of three hundred (300) or less, Groups B, F, M and S, and in places of religious worship, the main exterior door or doors are permitted to be equipped with key-operated locking devices from the egress side provided:

   2.1. The locking device is readily distinguishable as locked.

   2.2. A readily visible durable sign is posted on the egress side on or adjacent to the door stating: THIS DOOR TO REMAIN UNLOCKED WHEN BUILDING IS OCCUPIED. The sign shall be in letters one inch (25 mm) high on a contrasting background.

   2.3. The use of the key-operated locking device is revokable by the fire code official for due cause.

3. Where egress doors are used in pairs, approved automatic flush bolts shall be permitted to be used, provided that the door leaf having the automatic flush bolts has no doorknob or surface-mounted hardware.

4. Group R, Division 3 occupancies and individual dwelling units and guest rooms within Group R, Division 1 and Group R, Division 2 occupancies. Such occupancies may be provided with a night latch, double keyed dead bolt or security chain, provided such devices are openable from the inside without the use of a tool.

Section 1008.1.9 is hereby repealed.
(Ord. No. 2009.04, 3-5-09)

Sec. 1019. Number of exits and continuity.

Section 1019.2 is hereby amended as follows:

1019.2. Buildings with one exit. Only one exit shall be required in buildings as described below:

1. Buildings described in Table 1019.2, provided that the building has not more than one level below the first story above the grade plane.

2. Buildings of R-3 occupancy, except those licensed as an assisted living facility.

3. Single–level buildings with the occupied space at the level of exit discharge provided that the story or space complies with Section 1014.1 as a space with one means of egress.

EXCEPTION: R-4 and I-1 occupancies for adult or child care facilities are not permitted to have only one exit.

(Ord. No. 2009.04, 3-5-09)

Sec. 1024. Exit discharge.

Section 1024.6 is hereby amended as follows:

1024.6. Access to a public way. The exit discharge shall provide a direct and unobstructed access to a public way.

EXCEPTIONS:

1. Where access to a public way cannot be provided, a safe dispersal area shall be provided where all of the following are met:

    1. The area shall be of a size to accommodate at least five (5) square feet (0.28 m2) for each person.

    2. The area shall be located on the same property at least fifty (50) feet (15 240 mm) away from the building requiring egress.

    3. The area shall be permanently maintained and identified as a safe dispersal area.

    4. The area shall be provided with a safe and unobstructed path of travel from the building.

2. When the provisions of exception 1 cannot be met in E, I-1, R-3 group homes and R-4 occupancies, gates to the public way may be locked provided that all employees have on their person a key to unlock the gate(s) during an emergency.

(Ord. No. 2009.04, 3-5-09)

Sec. 2403. Temporary tents, canopies and membrane structures.

Section 2403.2 is hereby amended as follows:

2403.2. Approval required. Tents and membrane structures having an area in excess of four hundred (400) square feet (19 m2) and canopies in excess of nine hundred (900) square feet (37 m2) shall not be erected, operated or maintained for any purpose without first obtaining a permit and approval from the fire code official.
(Ord. No. 2009.04, 3-5-09)

Sec. 3308. Fireworks display.

Section 3308.1 is hereby amended as follows:

3308.1. General. The display of fireworks, including proximate audience displays and pyrotechnic special effects in motion picture, television, theatrical, and group entertainment productions, shall comply with this chapter and NFPA 1123 or NFPA 1126. The indoor use of fireworks and pyrotechnic special-effect materials shall be prohibited.
(Ord. No. 2009.04, 3-5-09)

Chapter 45. Referenced standards.

Chapter 45 is hereby amended as follows:

NFPA Standard Referenced

13-02	Installation of Sprinkler Systems	Table 704.1, 903.3.1.1, 903.3.2, 903.3.5.1.1, 903.3.5.2, 904.11, 907.9, 2301.1, 2304.2, Table 2306.2, 2306.9, 2307.2, 2307.2.1, 2308.2.2, 2308.2.2.1, 2310.1, 2501.1, 2804.1, 2806.5.7, 3404.3.3.9, Table 3404.3.6.3(7), 3404.3.7.5.1, 3404.3.8.4

(Ord. No. 2009.04, 3-5-09)

Secs. 14-42—14-49. Reserved.

ARTICLE III. FIREWORKS

Sec. 14-50. Definitions.

The following words, terms and phrases, when used in this article, have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

City permit means a permit issued by the fire medical rescue chief or designee.

Consumer fireworks mean those fireworks defined by Arizona Revised Statutes, § 36-1601.

Display fireworks mean those fireworks defined by Arizona Revised Statutes, § 36-1601.

Expenses of an emergency response means reasonable costs directly incurred by public agencies including but not limited to the city fire, police and public works departments or other first responders including but not limited to private ambulance companies that make an appropriate emergency response to an incident.

Fireworks mean consumer fireworks, display fireworks or permissible consumer fireworks as defined by Arizona Revised Statutes, § 36-1601.

Novelty items mean federally deregulated novelty items that are known as snappers, snap caps, party poppers, glow worms, snakes, toy smoke devices and sparklers.

Permissible consumer fireworks mean those fireworks as defined by Arizona Revised Statutes, § 36-1601 that may be sold within the city even where the use of those items has been prohibited.

Supervised public display means a monitored performance of display fireworks open to the public and authorized by city permit.
(Ord. No. 2010.38, 10-21-10)

Sec. 14-51. Fireworks prohibited; exceptions.

(a) The use, discharge or ignition of fireworks within the city is prohibited except for permissible consumer fireworks which shall be allowed June 24 through July 6 and December 24 through January 3 each year. At no time shall the use of consumer fireworks be authorized on city property, including parks, preserves, buildings and facilities, except as authorized under subsection b herein.

(b) Nothing in this section or article shall be construed to prohibit the use of novelty items or the occurrence of a supervised public display of fireworks authorized by city permit.
(Ord. No. 2010.38, 10-21-10; Ord. No. O2014.53, 10-2-14)

Sec. 14-52. Sale of fireworks.

(a) No person shall sell or permit or authorize the sale of permissible consumer fireworks to a person who is under sixteen (16) years of age.

(b) No person shall sell or permit or authorize the sale of permissible consumer fireworks in conflict with state law or Tempe City Code.

(c) No person shall sell or authorize the sale of permissible consumer fireworks, except from May 20 through July 6 and from December 10 through January 3 of each year.
(Ord. No. 2010.38, 10-21-10; Ord. No. O2014.53, 10-2-14)

Sec. 14-53. Posting of signs by persons engaged in the sale of fireworks; civil penalty.

(a) Prior to the sale of permissible consumer fireworks, every person engaged in such sales shall prominently display signs indicating the following:

(1) The use of permissible consumer fireworks, shall only be allowed June 24 through July 6 and December 24 through January 3.

(2) Consumer fireworks authorized for sale under state law may not be sold to persons under the age of sixteen (16).

(b) Signs required under this section shall be placed in each area where fireworks are displayed and at each cash register where fireworks are sold.

(c) The fire medical rescue chief or designee shall develop regulations concerning the size and color of the required signs and shall develop a model sign. The required sign regulations and model sign shall be posted on the city's website and filed with the clerk's office.

(d) Failure to comply with subsections (a) and (b) of this section is a civil offense punishable by a minimum fine of two hundred fifty dollars ($250).
(Ord. No. 2010.38, 10-21-10; Ord. No. O2014.53, 10-2-14)

Sec. 14-54. Authority to enforce violations of this article; means of enforcement.

(a) The fire medical rescue chief or designee, or a city police officer may issue civil complaints to enforce violations of this article designated as civil offenses.

(b) Any person authorized pursuant to this section to issue a civil complaint may also issue a notice of violation specifying actions to be taken and the time in which they are to be taken to avoid issuance of a civil or criminal complaint.

(c) The fire medical rescue chief or designee, or a city police officer may issue criminal complaints to enforce this article.
(Ord. No. 2010.38, 10-21-10)

Sec. 14-55. Penalty.

A person violating any prohibition or requirement imposed by this article is subject to a civil penalty of one-thousand dollars ($1,000.00), unless another penalty is specifically provided for.
(Ord. No. 2010.38, 10-21-10; Ord. No. O2014.53, 10-2-14)

Sec. 14-56. Liability for emergency responses related to use of fireworks.

(a) A person who uses, discharges or ignites permissible consumer fireworks on any days other than from June 24 through July 6 and from December 24 through January 3, other fireworks or anything that is designed or intended to rise into the air and explode or to detonate in the air or to fly above the ground, is liable for the expenses of any emergency response that is required by such use, discharge or ignition. The fact that a person is convicted or found responsible for a violation of this article is prima facie evidence of liability under this section.

(b) The expenses of an emergency response are a charge against the person liable for those expenses pursuant to subsection (a) of this section. The charge constitutes a debt of that person and may be collected proportionately by the public agencies, or other first responders that incurred the expenses. The liability imposed under this section is in addition to and not in limitation of any other liability that may be imposed.
(Ord. No. 2010.38, 10-21-10; Ord. No. O2014.53, 10-2-14)

Chapter 14A

HISTORIC PRESERVATION[1]

Sec. 14A-1. Purpose and intent.

The intent of this chapter is to provide protection for significant properties and archeological sites which represent important aspects of Tempe's heritage; to enhance the character of the community by taking such properties and sites into account during development, and to assist owners in the preservation and restoration of their properties. Reasonable and fair regulations are included in this chapter as a means of balancing the rights of property owners and the value to the community of these significant properties and sites. The designation of any property or district shall not inhibit uses as permitted by the Zoning and Development Code, as adopted and amended by the city council.
(Ord. No. 95.35, 11-9-95; Ord. No. 2004.42, 1-20-05)

Sec. 14A-2. Definitions.

The language of the definitions in this chapter shall be interpreted so as to convey the same meaning as in common usage, thereby giving this chapter its most reasonable application.

Alteration means any aesthetic, architectural, mechanical or structural change to the exterior surface of any significant part of a designated property.

Archeologically sensitive means a property which includes known or suspected archeological sites.

Archeological site means a site that has yielded, or exhibits the promise of yielding, information important in the understanding of human prehistory or history. Such information may consist of evidence of past human life, habitation or activity, as well as material remains.

Arizona register of historic places[2] means the list of Arizona's historic properties worthy of preservation which serves as an official record of Arizona's historic districts, archeological sites, buildings, structures and objects significant in this state's history, architecture, archeology, engineering and culture. Pursuant to A.R.S. § 41-511.04(9), the Arizona state parks board, state historic preservation office is authorized to keep and administer an Arizona register of historic places composed of properties which meet the criteria established by the board, see below, or which are listed on the national register of historic places. Entry on the register requires nomination by the state historic preservation officer (SHPO) and owner notification in accordance with rules which the board adopts. The criteria for evaluation of potential Arizona register properties generally encompass the quality of significance in Arizona history, architecture,

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[1] **Cross references**—Buildings and building regulations, Ch. 8; Planning and development, Ch. 25.
State law reference—A.R.S. § 9-462.01

[2] *Arizona register of historic places* definition and criteria as published by Arizona state parks, state historic preservation office.
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archeology, engineering and culture. Such qualities may be present in districts, sites, buildings, structures and objects that possess integrity of location, design, setting, materials, workmanship, feeling and association; and also:

(1) Are associated with events that have made a significant contribution to the broad patterns of history;

(2) Are associated with the lives of historically significant persons;

(3) Are the embodiment of a distinctive characteristic(s) of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or

(4) Have yielded, or may be likely to yield, information important in prehistory or history.

Building means any structure created to shelter any form of human activity, such as a house, church or hotel; may also refer to a related complex such as a courthouse and jail, or a house and barn.

Certified Local Government (CLG) means a federal program, the aim of which is to decentralize the national historic preservation program by assigning decision-making to the states and, ultimately, to local governments. Applications for certification are reviewed by the state historic preservation officer and must document, at a minimum, establishment of an historic preservation commission with specific membership and duties, adoption of an historic preservation ordinance and development of an historic preservation plan.

Commission means the historic preservation commission of Tempe.

Compatibility means a pleasing visual relationship between elements of a property, building, or structure, or among properties, buildings and structures, or with their surroundings. Aspects of compatibility may include, but are not limited to, proportion, rhythm, detail, texture, material, reflectance and architectural style.

Contributing property means a classification applied to an individual property within a designated historic district, signifying that the property contributes generally to the distinctive character of the district; or an archeological site.

Demolition means the act or process that destroys a designated property.

Designated property means any property which has been classified as a landmark, historic property or contributing property within an historic district.

Distinctive character means the distinguishing architectural and aesthetic characteristics of a landmark or historic property, or those generally found throughout an historic district, which fulfill the criteria for designation.

Historic district means a designation, in the form of overlay zoning, applied to all properties within an area with defined boundaries, as a result of formal adoption by the city council, which express a distinctive character worthy of preservation. An historic district may also include or be composed of one or more archeological sites.

Historic eligible means a property which appears to meet the criteria for designation.

Historic preservation officer (HPO) means a city staff member appointed by the community development director to serve as secretary to the historic preservation commission, maintain the Tempe historic property register and otherwise perform such tasks and duties as assigned by this chapter.

Historic preservation plan means a document, formally adopted by the city council, containing goals and policies regarding historic preservation within the city.

Historic property means a designation, in the form of overlay zoning, applied to an individual property, as a result of formal adoption by the city council, which expresses a distinctive character worthy of preservation, or an archaeological site.

Landmark means a designation, in the form of overlay zoning, applied to an individual property, as a result of formal adoption by the city council, which has achieved significance within the past fifty (50) years and which expresses a distinctive character worthy of preservation and which otherwise fulfills or exceeds the criteria for designation as an historic property.

National register of historic places[3] means the national register of historic places as established by the Historic Sites Act of 1935 (16 U.S.C. § 461 et seq.) and expanded by the National Historic Preservation Act of 1966, (16 U.S.C. § 470 et seq.) as amended. It is the nation's official listing of prehistoric and historic properties worthy of preservation. It affords protection and recognition for districts, sites, buildings and structures significant in American history, architecture, archeology, engineering and culture. This significance can be at the local, state or national level. The national register serves both as a planning tool and as a means of identifying buildings, sites and districts that are of special significance to a community and worthy of preservation. The criteria for evaluation of potential national register properties generally encompass the quality of significance in American history, architecture, archaeology, engineering and culture. Such qualities may be present in districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling and association; and

(1) That are associated with events that have made a significant contribution to the broad patterns of our history;

(2) That are associated with the lives of persons significant in our past;

[3]*National register of historic places* definition and criteria as published by Arizona state parks, state historic preservation office, and as found in the Code of Federal Regulations, Title 36, Part 60.

(3) That embody the distinctive characteristics of a type, period or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or

(4) That have yielded, or may be likely to yield, information important in prehistory or history.

Noncontributing property means a classification applied to an individual property located within a designated historic district, signifying that the property does not contribute to the distinctive character of the district. Such properties are subject only to the provisions of this chapter regarding new construction, including general landscape character, and only when the amount of new construction equals or exceeds twenty-five percent (25%) of the land area or building ground floor area of the property at the time of its identification as noncontributing.

Ordinary maintenance and repair means regular or usual care, upkeep or replacement of any part, or putting back together that which is deteriorated or broken, of an existing property, building or structure to effect the maintenance of a safe, sanitary and stable condition.

Owner means the legal ownership entity of an individual parcel or property, as recorded with Maricopa County. For purposes of this chapter, each such parcel or property shall be considered to have one owner.

Parcel means land identified as a separate lot for purposes of the subdivision and zoning regulations of the city and so recorded with Maricopa County.

Preservation covenant means a deed restriction, filed with Maricopa County, which limits the owner's use of a designated property in order to effect the preservation of the distinctive character of the property.

Preservation easement means the nonpossessory interest of a holder in real property, said property being a designated property, imposing limitations or obligations to preserve the distinctive character of that property, or a specified portion thereof.

Property means building(s), structures(s) or other improvements, or an archeological site, associated with a particular parcel or location.

Secretary of the interior's standards for the treatment of historic properties means standards developed and adopted, as amended, by the secretary of the interior of the United States to guide work funded by, or otherwise conducted under the auspices of, the federal government on historic properties and archeological sites. Guidelines are given for preservation, rehabilitation, restoration and reconstruction.

Significant means having aesthetic, architectural or historical qualities of critical importance to the consideration of a property, building or structure for classification as a designated property.

Structure means anything built, constructed or erected, or any piece of work artificially built-up or composed of parts joined together in some definite manner, the existence of which requires a permanent or semi-permanent location on or in the ground, including, but not limited to: bridges, dams, walls, fences, gazebos, garages, advertising signs, communications towers, sculpture, monuments, recreational facilities and water distribution systems.

Tempe historic property register means a document listing all designated properties and districts in the city.
(Ord. No. 95.35, 11-9-95; Ord. No. 97.20, 4-10-97; Ord. No. 2000.25, 6-15-00; Ord. No. 2001.17, 7-26-01; Ord. No. 2005.18, 4-7-05; Ord. No. 2010.02, 2-4-10)

Sec. 14A-3. Historic preservation commission; historic preservation officer.

(a) The Tempe historic preservation commission is hereby established. The commission shall act in an advisory capacity to the city council in all matters concerning historic preservation. The commission shall make recommendations to the development review commission regarding designation of landmarks, historic properties and historic districts. Other actions of the historic preservation commission, as set forth below, shall be subject to appeal to the city council, as described in § 14A-8 of this chapter.

(b) The commission shall consist of nine (9) members, meeting certain qualifications as set forth below, appointed by the mayor and approved by the city council.

(1) All members shall be Tempe residents with a demonstrated interest in or knowledge of historic preservation; and

(2) The commission shall be composed of four (4) at-large members and five (5) professionals, drawn from the following disciplines, with no more than two (2) such professionals from the same discipline: architecture, architectural history, archeology, historic preservation law, history, landscape architecture, planning, building construction, or other related field.

(c) Members shall serve a term of three (3) years, except that two (2) of the initial members shall, upon appointment, be designated to serve terms of two (2) years each. In addition, two (2) other initial members shall be designated to serve first terms of one year. Those subsequently appointed shall serve regular terms of three (3) years. Members may be reappointed, but shall serve not more than two (2) complete, consecutive terms. If a commission member accumulates three (3) consecutive unexcused absences, the matter will be referred to the mayor's office for resolution. Members of the commission shall serve voluntarily and without compensation.

(d) The Tempe history museum manager, or designee, shall serve ex-officio, with no vote, except as specified.

(e) Whenever a member is unable to attend or must decline participation due to a conflict of interest, that member shall give timely notice to the HPO or chair of the commission. In the event that a sufficient number of members are not available to constitute a

quorum, the HPO or the Tempe history museum manager or designee is authorized to act as a member on consent agenda items only, and only to the extent that this presence constitutes a quorum.

(f) Five (5) members shall constitute a quorum of the commission; the concurring vote of five (5) members shall be necessary for any action of the commission on any matter.

(g) Conflict of interest of commission members is governed by Arizona Revised Statutes, applicable judicial decisions and opinions of the city attorney.

(h) The commission shall elect, from within its own membership, a chair and vice-chair.

(i) The commission shall hold a minimum of four (4) public meetings/hearings per year. Special meetings may be called at the discretion of the commission chair or five (5) or more members of the commission. The minutes of its proceedings, indicating the vote of each member and records of its examinations and other official actions shall be kept and filed in the offices of the community development department and the city clerk as part of the public record.

(j) The commission shall adopt rules of procedure consistent with the provisions of this chapter for the performance of its duties.

(k) Commission duties and activities shall include the following:

(1) Reviewing applications for the designation of landmarks, historic properties and historic districts and making recommendations to the development review commission, such review shall be based on the criteria as specified in § 14A-4 of this chapter;

(2) Reviewing and making decisions on applications for proposed alterations, new construction, demolition or removal affecting landmarks, historic properties or properties located within an historic district; such review shall be based on the criteria as specified in § 14A-6 of this chapter;

(3) Making recommendations to the city council concerning the use of federal, state, city or available private funds to promote the preservation of properties and districts within the city, including acquisition, the awarding of such sub-grants as may become available and the requiring of preservation covenants, as well as the acquisition of preservation easements;

(4) Recommending to the city council and other applicable boards and commissions, changes in the Zoning and Development Code, building code, general plan or other local laws as may enhance the purposes of this chapter;

(5) Cooperating with representatives designated by the property owners of the district from designated historic districts to formulate design guidelines for alterations and new construction within their districts;

(6) Initiating and conducting detailed studies and surveys of properties, structures and areas within the city and assess their potential for designation, and in order to formulate an historic preservation plan for the city; and

(7) Developing and participating in public information activities in order to increase public awareness of the value of historic preservation, and perform other functions that will encourage or further the interests of historic preservation.

(l) The Tempe historic preservation officer (HPO) is hereby established. The HPO shall be appointed by the director of the community development department, have a demonstrated interest in historic preservation and be a qualified professional in one or more pertinent fields such as archeology, architecture, cultural geography, landscape architecture or planning. The duties of the HPO shall include:

(1) Serving as secretary to the historic preservation commission, facilitating its efforts and, with other city staff as necessary, providing administrative support;

(2) Accepting applications for designations and proposed alterations, new construction, demolition or removal;

(3) Acting as intermediary between the commission and other city regulatory functions;

(4) Providing technical and background information to the commission and public, as required;

(5) Approving proposed alterations, new construction, demolition or removal affecting landmarks, historic properties and properties within historic districts, in the instance of such work being obviously minor in nature and impact, or in cases of imminent public hazard, and reporting such approvals to the commission;

(6) Preparing annual written reports of commission activities that are submitted to the state historic preservation officer (SHPO) and made available to the public. The reports shall contain, at a minimum, minutes of meetings, decisions made, special projects and activities, the number and type of cases reviewed, current resumes of commission members and member attendance records; and

(7) Maintaining the Tempe historic property register and lists of historic eligible and archeologically sensitive properties.

(Ord. No. 95.35, 11-9-95; Ord. No. 97.20, 4-10-97; Ord. No. 2000.25, 6-15-00; Ord. No. 2001.17, 7-26-01; Ord. No. 2004.42, 1-20-05; Ord. No. 2005.18, 4-7-05; Ord. No. 2006.01, 1-5-06; Ord. No. 2010.02, 2-4-10; Ord. No. O2014.22, 6-12-14; Ord. No. O2014.36, 9-4-14)

Sec. 14A-4. Designation of landmarks, historic properties and historic districts.

(a) The following criteria are established for designation of an individual property, building, structure or archeological site:

(1) It meets the criteria for listing on the Arizona or national register of historic places;

(2) It is found to be of exceptional significance and expresses a distinctive character, resulting from:

a. A significant portion of it is at least fifty (50) years old; is reflective of the city's cultural, social, political or economic past; and is associated with a person or event significant in local, state or national history; or

b. It represents an established and familiar visual feature of an area of the city, due to a prominent location or singular physical feature; or

(3) If it has achieved significance within the past fifty (50) years, it shall be considered eligible for designation as a landmark if it is an integral and critical part of an historic district or demonstrates exceptional individual importance by otherwise meeting or exceeding the criteria specified in paragraphs (1) or (2) of this subsection above. At such time as a landmark becomes fifty (50) years old, it will automatically be reclassified as an historic property.

(b) The following criteria are established for designation of an historic district:

(1) The district consists of an area in which are located a substantial concentration of properties, buildings or structures which individually meet the criteria in subsection (a) of this section above, as well as others which contribute generally to the overall distinctive character of the area, and are united historically or visually by plan or physical development; district boundaries coincide with documented historic boundaries such as early roadways, canals, subdivision plats or property lines; other district boundaries coincide with logical physical or man-made features and reflect recognized neighborhood or area boundaries; and other noncontributing properties or vacant parcels are included where necessary to create appropriate boundaries; or

(2) A district may also include or be composed of one or more archeological sites.

(c) The designation process is as follows:

(1) Application for the designation of a landmark, historic property or historic district shall be made by the owner of such real property, or of property located within the boundaries of such proposed district, situated in the city, or by any officer, department, board, commission or the city council, with the HPO at the community development department, on such form(s) and accompanied by such fee(s) as may be adopted;

(2) Any such application for designation, as described in paragraph (1) of this subsection above, shall also be accompanied by:

a. A vicinity ownership map showing all parcels in the vicinity adjacent to, including and surrounding the proposed designated property or district, within a radius of three hundred (300) feet from the external boundaries of the property or district; each such parcel shall be designated by a number to correspond with the ownership/tenant list described in subparagraph b. of this paragraph below;

b. A typed or legibly printed list containing names and mailing addresses, including zip codes, of owners of parcels as described in subparagraph a. of this paragraph above, and identified by the same number as on the vicinity ownership map, and the names and addresses, including zip codes, of any tenants associated with the described parcels;

c. An accurate legal description or parcel number(s) as recorded with Maricopa County, of the proposed designated property or properties within the proposed historic district; and

d. A written description of the proposed designated property or historic district, addressing the pertinent criteria, as described in subsections (a) and (b) of this section;

(3) The HPO shall then place the request on the next available agenda of the commission for a public hearing. Upon request by the applicant, a special meeting may be called at the discretion of the chair of the commission, or by five (5) or more commission members;

(4) Upon receipt of an application and placement on the next available commission agenda, the HPO shall compile and transmit to the commission a complete report on the subject property or district. This report shall address the location, condition, age, significance and integrity of historic features and identify potential contributing and noncontributing properties and other relevant information, together with a recommendation to grant or deny the application and the reasons for the recommendation;

(5) At a public hearing, the commission shall review the application based on the applicable criteria in subsections (a) and (b) of this section, together with the HPO report, and make a recommendation to the development review commission. Any recommendation for approval may be subject to such conditions as the historic preservation commission deems applicable in order to fully carry out the provisions and intent of this chapter;

(6) Once forwarded to the development review commission, a public hearing shall be set and conducted according to the applicable procedures for amendment, as described in Section 6-304 of the Zoning and Development Code;

(7) After such public hearing, the development review commission shall make a report and recommendation to city council. The city council shall then set a public hearing on the application in accordance with subsection (e) of this section; and

(8) The recommendation of approval of any designation by the historic preservation commission shall be void if the designation has not been adopted by the city council within one year of the commission's action.

(d) Notification of public hearings is established as follows:

(1) For a designation request, the community development department shall deposit in the U.S. mail, not less than fifteen (15) calendar days prior to the date of each public hearing of the historic preservation commission, a notice of the date, time and place of the hearing, and a summary of the request, to each affected property owner and tenant, per a list provided by the applicant. Final delivery of such notices shall not be the responsibility of the city. Notice shall be given as follows:

a. For a landmark or historic property request, "affected property owners and tenants" shall be those within three hundred (300) feet of the subject property; or

b. For an historic district request, "affected property owners and tenants" shall be those within the boundaries of the proposed district and within three hundred (300) feet external to those boundaries;

(2) The community development department shall erect, not less than fifteen (15) calendar days prior to the date of the public hearing, a notice, visible from a public way and clearly legible, of the date, time and place of the hearing, and a summary of the request. It shall not be the responsibility of the city to maintain the notice after it has been placed. Notice shall be given as follows:

a. For a landmark or historic property request, such notice shall, wherever possible, be placed adjacent to the subject property in the right-of-way of a public street or road; or

b. For an historic district, such notice shall, wherever possible, be placed at no fewer than four (4) conspicuous locations within the district and at its external boundaries;

(3) The community development department shall submit the request for publication in the official newspaper at least once, no fewer than fifteen (15) days prior to the public hearing of the commission; and

(4) Notification pertaining to a proposed text amendment to this chapter shall comply with paragraph (3) of this subsection above, only.

(e) The city council will, upon receipt of an application and accompanying decision and report from the development review commission, hold a public hearing to consider the application. Notification for such hearing shall be as specified in subsection (d) of this section above. At the public hearing, the city council may do one of the following:

(1) Adopt the request per the recommendation of the development review commission;

(2) Modify the recommendations and adopt the request as modified;

(3) Deny the request; or

(4) Remand the request to the development review commission for further proceedings.

(f) If the owners of twenty percent (20%) or more either of the area of the parcels included in a proposed historic district, or of those immediately adjacent in the rear or any side thereof extending one hundred fifty (150) feet therefrom, or of those directly opposite thereto extending one hundred fifty (150) feet from the street frontage of the opposite parcels, file a protest in writing against a proposed designation, it shall not become effective except by the favorable vote of three-fourths (3/4) of all members of the city council. Such protest shall be filed with the city clerk prior to or at the time of the public hearing of the council. If any members of the city council are unable to vote on such a question because of a conflict of interest, then the required number of favorable votes for passage of the question shall be three-fourths (3/4) of the remaining membership of the council, provided that such required number of votes shall in no event be less than a majority of the full membership of the council.

(g) The effects of designation are as follows:

(1) If adopted by the city council, a landmark, historic property or historic district shall be designated by the application of the corresponding overlay zoning district and referenced by the "H" symbol on a map of the city, to be issued by the community development department;

(2) Any uses permitted by the existing, underlying zoning classifications which apply to a landmark, historic property or historic district, shall be permitted. Such designated properties and districts are subject to the provisions of this chapter, as well as to applicable provisions of the Zoning and Development Code and the general plan; and

(3) Subsequent to designation of an historic district, the historic preservation commission shall, in cooperation with representatives from the district, and in order to preserve and enhance the distinctive character of the district, adopt design guidelines which shall apply only to the exterior features and general character of contributing properties and alterations thereto, as well as any other new construction within the district as follows:

a. District design guidelines will address general aspects such as building materials, massing, scale and proportion of openings and other features, orientation and relative position of buildings and landscape character; as well as specific aspects such as roof forms, textures, color theme, character of signage, window and door types, and other details relative to architectural styles evident in the district;

b. District design guidelines will not regulate maximum building height, maximum lot coverage, minimum setbacks, required landscaping, required parking, allowable signs or other provisions of the Zoning and Development Code; and

c. Following designation of an historic district, and until such time as district-specific design guidelines can be adopted, the commission shall refer to such professional or commonly recognized standards as may be appropriate and available.

(h) The procedure to remove landmark, historic property or historic district designation and corresponding overlay zoning shall be the same as the procedure to designate, as specified in subsections (c), (d), (e) and (f) of this section.

(i) No landmark, historic property or historic district, having been nominated for designation, or removal of designation, shall be renominated within one year from the date of previous nomination.

(j) The procedure and effects of classification of a property as historic eligible shall be as follows:

(1) The HPO shall prepare a list of proposed properties, with applicable supporting information, for consideration by the commission and schedule a public hearing; notification of such hearing is established as follows:

a. The community development department shall deposit in the U.S. mail, not less than fifteen (15) calendar days prior to the date of the public hearing of the commission, a notice of the date, time and place of the hearing, and a summary of the proposed action, to each affected property owner, per currently available ownership information. Final delivery of such notices shall not be the responsibility of the city; and

b. The community development department shall submit the notice for publication in the official newspaper at least once, no fewer than fifteen (15) calendar days prior to the public hearing of the commission;

(2) At a public hearing, the commission shall review the proposed properties and assess their potential to meet the applicable criteria for designation, as described in subsection (a) of this section; and

(3) Upon approval by the commission, any properties classified as historic eligible shall be identified as such in the records of the community development department and subject to the requirements described in § 14A-6(f) and § 14A-7(j) of this chapter.

(k) The procedure and effects of classification of a property as archeologically sensitive shall be as follows:

(1) The HPO shall prepare a list of proposed properties, with applicable supporting information, for consideration by the commission at a regularly scheduled public meeting; and

(2) Upon approval by the commission, any properties classified as archeologically sensitive shall be identified as such in the records of the community development department and subject to the requirements described in § 14A-6(g) and § 14A-7(k) of this chapter.

(Ord. No. 95.35, 11-9-95; Ord. No. 97.20, 4-10-97; Ord. No. 2000.25, 6-15-00; Ord. No. 2004.42, 1-20-05; Ord. No. 2005.18, 4-7-05; Ord. No. 2006.01, 1-5-06; Ord. No. O2014.22, 6-12-14)

Sec. 14A-5. Historic property register.

(a) The Tempe historic property register is hereby established for the purpose of listing the landmarks, historic properties and historic districts, as designated under the provisions of this chapter. This register, as may be amended from time to time, shall serve as the official record of all such designations and shall be maintained by the HPO and available for public reference at the community development department and the city clerk.

(b) Supplemental to the historic property register shall be the lists of properties classified as historic eligible and archeologically sensitive. These lists, as may be amended from time to time, shall be maintained by the HPO and available for public reference at the community development department and the city clerk.

(Ord. No. 95.35, 11-9-95; Ord. No. 97.20, 4-10-97; Ord. No. 2000.25, 6-15-00; Ord. No. 2005.18, 4-7-05)

Sec. 14A-6. Guidelines, standards and process for review of alteration or new construction.

(a) When a building permit or other permit or approval is sought from the city to alter, remodel, build or otherwise develop or landscape property designated as a landmark, historic property, or that is located within a designated historic district, issuance of the permit or approval shall be deferred until after approval has been obtained from the historic preservation commission, or in the cases of work obviously minor in nature or of no effect to the property or district, the HPO. The issuance of such approval indicates conformance with the provisions and intent of this chapter only and does not imply approval by other city regulatory agencies.

(b) Review by the commission of a request for approval of proposed alteration or new construction shall require submittal to the HPO of:

(1) An application, on such form(s) and accompanied by such fee(s) as may be adopted;

(2) Photographs of the existing property;

(3) Drawings, to approximate scale, of the site plan, floor plan(s) and elevations of the proposed work, indicating materials and color scheme;

(4) If signage is part of the proposed work, drawings, to approximate scale, showing the size and location of proposed signage, type of lettering to be used and indication of color and type of illumination, if any; and

(5) Any other information which the applicant or the commission may reasonably deem necessary to review the proposed work.

(c) The commission shall consider the request at its next available regularly scheduled or special public meeting. Approval or denial shall be based on the following criteria:

(1) Proposed work on any portion of a landmark or historic property shall be compatible with the recognized distinctive character of the overall property;

(2) Proposed work on any portion of a contributing property within an historic district shall be compatible with the recognized distinctive character of the property itself, as well as with that of the overall district, as determined by conformance with adopted design guidelines of the district;

(3) Proposed new work within an historic district shall be compatible with the recognized distinctive character of the district, as determined by conformance with adopted design guidelines of the district; and

(4) If federal funds, in the form of grants, tax incentives or other programs, are employed, directly or indirectly, in financing proposed work, the secretary of the interior's standards for the treatment of historic properties shall be applicable, in addition to the criteria specified in paragraphs (1) through (3) of this subsection above.

(d) The commission shall act to approve, deny, conditionally approve or continue an application at the public meeting at which it is initially reviewed. The HPO shall issue and record a notice of approval or denial and specify the reasons for, and any conditions of, the commission's action.

(e) Approval of an application by the commission or HPO shall be valid for a period of one year from the date of approval.

(f) When a permit or other approval is sought from the city to alter, remodel, build or otherwise develop or landscape property classified as historic eligible, issuance of the permit or approval shall be subject to clearance by the HPO. Such clearance shall be issued within thirty (30) calendar days from the date of application, during which time the HPO will assess potential

adverse impact, suggest alternatives, and may consult with the commission and city council. If, by the end of the thirty (30) day period, no clearance has been issued or no alternative, agreeable to the applicant, has been suggested, the original request shall be granted, provided all other applicable requirements have been met.

(g) When a permit or other approval is sought from the city to alter, remodel, build or otherwise develop or landscape property classified as archeologically sensitive, the applicant shall be advised as to the status of the property, potentially applicable state and federal requirements, and suggested course(s) of action. In the case of city-owned property or right-of-way, applicable state and federal requirements shall determine the appropriate course of action. (Ord. No. 95.35, 11-9-95; Ord. No. 2000.25, 6-15-00)

Sec. 14A-7. Demolition and removal.

(a) When a permit or other approval is sought from the city to demolish or remove a designated property, issuance of the permit or approval shall be deferred until after approval has been obtained from the historic preservation commission, or in the cases of work obviously minor in nature or involving an imminent hazard to public safety, the HPO. The issuance of such approval indicates conformance with the provisions and intent of this chapter only and does not imply approval by other city regulatory agencies.

(b) Review by the commission of a request for approval of proposed demolition or removal shall require submittal to the HPO of:

(1) An application, on such form(s) and accompanied by such fee(s) as may be adopted;

(2) Photographs of the existing property;

(3) A preliminary plan of redevelopment for the parcel indicating an intended use that is in compliance with the general plan and existing or proposed zoning and other applicable regulations, as well as with §14A-6 of this chapter;

(4) If economic relief is requested, supporting documentation necessary to demonstrate applicability of the standards as described in subsection (d) of this section; and

(5) Any other information which the applicant or the commission may reasonably deem necessary to review the request.

(c) The commission shall consider the request at its next regularly scheduled or special public meeting. Approval or denial shall be based on the following criteria:

(1) The property which is proposed for demolition or removal is of no historic or architectural value or significance and does not contribute to the distinctive character of the property;

(2) Loss of the property would not adversely affect the integrity, nor diminish the distinctive character of an historic district; and

(3) If economic relief is requested, applicability of the standards as described in subsection (d) of this section below.

(d) An application for demolition may be accompanied by a request for economic hardship relief. Separate standards for granting economic hardship relief to allow demolition or removal of a designated property are hereby established for investment or income producing properties, and for non-income producing properties. Non-income producing properties shall consist of owner-occupied single-family dwellings and non-income producing institutional properties. Economic hardship relief shall be granted as follows:

(1) In regard to an income producing property, when the applicant demonstrates that a reasonable rate of return cannot be obtained from a property which retains features which contribute to its distinctive character in its present condition or if rehabilitated, either by the current owner or a potential buyer; or

(2) In regard to a non-income producing property, when the applicant demonstrates that the property has no reasonable use as a single-family dwelling or for an institutional use in its present condition, or if rehabilitated, either by the current owner or a potential buyer.

(e) Economic hardship relief shall not be granted due to any of the following circumstances:

(1) Willfully destructive acts by the owner;

(2) Purchase of the property for substantially more than the market value;

(3) Failure to perform ordinary maintenance and repair; or

(4) Failure to diligently solicit and retain tenants or provide normal tenant improvements.

(f) The commission shall act to approve, deny, conditionally approve or continue an application at the public meeting at which it is initially reviewed. The HPO shall issue and record a notice of decision and specify the reasons for, and any conditions of, the commission's action.

(g) Approval of an application by the commission or HPO shall be valid for a period of one year from the date of approval.

(h) If a request for a proposed demolition or removal is denied by the commission, no demolition or removal will be permitted for a period of no more than one hundred eighty (180) days from the date on which the request was denied. During the period of restraint of demolition or removal, the commission and HPO will attempt to secure whatever assistance as may be feasible to effect the preservation of the property, such as economic assistance, acquisition, purchase of a preservation easement, or location of a buyer who, upon purchase at terms

agreeable to the owner, will enter into a preservation covenant with the city for period of at least five (5) years. If the commission or HPO is unable to secure such assistance within the period of restraint, the proposed demolition or removal will be allowed, subject to the issuance of the appropriate permit by the building official of Tempe.

(i) If the building official finds that a designated property is an imminent hazard to public safety and, together with the HPO, determines that repairs or relocation would not be appropriate or feasible, the HPO shall approve the necessary demolition or removal, subject to issuance of the appropriate permit by the building official.

(j) When a permit or other approval is sought from the city to demolish or remove a property classified as historic eligible, issuance of the permit or approval shall be subject to clearance by the HPO. Such clearance shall be issued within thirty (30) calendar days from the date of application, during which time the HPO will assess adverse impact, suggest alternatives, and may consult with the commission and city council. If, by the end of the thirty (30) day period, no clearance has been issued or no alternative, agreeable to the applicant, has been suggested, the original request shall be granted, provided all other applicable requirements have been met.

(k) When a permit or other approval is sought from the city to demolish or remove a property classified as archeologically sensitive, the applicant shall be advised as to the status of the property, potentially applicable state and federal requirements, and suggested course(s) of action. In the case of city-owned property or right-of-way, applicable state and federal requirements shall determine the appropriate course of action.
(Ord. No. 95.35, 11-9-95; Ord. No. 97.20, 4-10-97; Ord. No. 2000.25, 6-15-00)

Sec. 14A-8. Appeal.

(a) The applicant for approval of proposed alteration, new construction, demolition or removal, or designation, or classification as historic eligible, or the owner of any such property, or the community development director, or any member of the city council, may appeal any decision of the historic preservation commission to the city council by filing written notice of appeal and any applicable fee, as may be adopted, with the city clerk within ten (10) working days of the date of the commission's action, in accordance with Rule 6 of Arizona Rules of Civil Procedure of the State of Arizona.

(b) Notice of an appeal and the date set for its review by the city council shall be published at least once, not less than seven (7) days prior to the council meeting at which such appeal is to be heard.

(c) The city clerk shall set the date for a public hearing of the appeal by the council within thirty (30) days of the filing of the appeal.
(Ord. No. 95.35, 11-9-95; Ord. No. 97.20, 4-10-97; Ord. No. 2000.25, 6-15-00; Ord. No. 2001.17, 7-26-01; Ord. No. 2005.18, 4-7-05; Ord. No. 2010.02, 2-4-10)

Sec. 14A-9. Maintenance and repair.

(a) Ordinary maintenance and repair of a designated property shall be performed by the owner and shall not require specific approval from the HPO or commission, provided that such

maintenance or repair does not significantly alter the features which contribute to the distinctive character of such a designated property.

(b) The owner of a designated property shall not permit the property to fall into a state of disrepair so as to result in the deterioration of any significant exterior feature which would have a detrimental effect on the distinctive character of the property itself or, that of the overall district, if located within an historic district.

(c) The condition of the property at the time of its designation shall be the standard of reference for the evaluation of future deterioration.

(d) Examples of deterioration which shall be prevented by the owner of the designated property by means of ordinary maintenance and repair shall include, but not be limited to the following:

(1) Excessive erosion, reverse drainage and other preventable site conditions which may adversely affect significant buildings and structures;

(2) Loss of structural integrity due to deterioration of footings, load-bearing walls or columns, beams, trusses or other support members;

(3) Weathering or damage to exterior elements such as wall and roof surfaces, chimneys, balustrades, doors, windows and other architectural features;

(4) Loss of weather-tightness or security due to any of the above; or

(5) Deterioration of any feature so as to create a hazardous condition which could lead to the claim that demolition is necessary as a matter of public safety.

(e) In order to prevent demolition by neglect, resulting from deterioration as described in subsection (d) of this section above, the city may effect repairs to a landmark, historic property or contributing property within an historic district and treat the cost of such repairs as a lien against the property.

(f) Enforcement of this section shall be the responsibility of the city manager or designee. (Ord. No. 95.35, 11-9-95)

Sec. 14A-10. Incentives.

It is the intent of the city to make ownership of a landmark, historic property or property within an historic district as beneficial as possible. In addition to the intangible benefits of owning a property recognized as an important community resource, the HPO or commission may, when applicable and possible, provide such owners with the following:

(1) Assistance in locating potential sources of financial assistance and tax credits;

(2) Assistance in preparing grant applications and potential third party sponsorship;

(3) Technical information and referrals;

(4) Assistance in locating buyers or sellers;

(5) Assistance, through the neighborhood programs office, in the formulation and operation of a neighborhood association; and

(6) Assistance in obtaining other benefits as may become available through the city or other sources.

(Ord. No. 95.35, 11-9-95)

Sec. 14A-11. Violations.

(a) Any person who constructs, alters, neglects, demolishes or removes a property or portion thereof in violation of the provisions of this chapter may be required to restore the property to its appearance prior to the violation.

(b) Enforcement of this section shall be the responsibility of the city manager or designee. Any resulting action regarding a violation of any provision of this chapter shall be brought by the city attorney. The civil remedy shall be in addition to, and not in lieu of, any criminal prosecution and penalty.

(c) Any person found to be in violation of any provision of this chapter shall be guilty of a misdemeanor, punishable in accordance with § 1-7 of this code.

(Ord. No. 95.35, 11-9-95)

Chapter 15

LIBRARY[1]

ARTICLE I. IN GENERAL

Secs. 15-1—15-15. Reserved.

ARTICLE II. LIBRARY ADVISORY BOARD[2]

Sec. 15-16. Repealed.
(Code 1967, § 15A-2; Ord. No. 2008-01, 1-24-08)

Sec. 15-17. Repealed.
(Code 1967, § 15A-3; Ord. No. 2008-01, 1-24-08)

Sec. 15-18. Repealed.
(Code 1967, § 15A-4; Ord. No. 2008-01, 1-24-08)

Sec. 15-19. Repealed.
(Code 1967, § 15A-5; Ord. No. 2008-01, 1-24-08)

[1] **Cross reference**—Boards, commissions, etc., generally, § 2-181 et seq.

[2] **Editor's note**—Ord. No. 2008.01 repealed the library advisory board from Ch. 15 and it has been incorporated into Ch. 2, Art. V, Div. 18, library advisory board § 2-345 et seq. Ord. No. 2014.22 consolidated the historical museum advisory board and the library advisory board into a single advisory board. See history museum and library advisory board, §§ 2-191—2-199.

Chapter 16

LICENSE, PRIVILEGE AND EXCISE TAXES[1]

ARTICLE I. GENERAL CONDITIONS AND DEFINITIONS

Sec. 16-1. Words of tense, number and gender; code references.

(a) For the purposes of this Chapter, all words of tense, number, and gender shall comply with A.R.S. Section 1-214 as amended.

(b) For the purposes of this Chapter, all code references, unless specified otherwise, shall:

(1) Refer to this City Code;

(2) Be deemed to include all amendments to such code references.

(Ord. No. 87.17, § 1, 4-23-87)

[1]**Editor's note—**(a) Ordinance No. 87.17, adopted April 23, 1987, effective July 1, 1987, essentially amended Ch. 16 in its entirety. Section 1 adopted the "City Tax Code of Tempe, Arizona," and designated that said tax code be incorporated into the Code of Ordinances as Ch. 16, Arts. I—VI. Section 3 of Ord. No. 87.17 amended Ch. 16 by repealing the provisions of former Arts. I—III thereof, substantive provisions of which consisted of §§ 16-16 —16-46 and 16-61—16-69. Section 5 of Ord. No. 87.17 renumbered former Arts. IV and V of Ch. 16 as new Arts. IX and X, and added two new articles, Arts. VII and VIII, which were reserved for future legislation.

(b) Former Art. VI of Ch. 16, pertaining to escorts, escort bureaus and introductory services, was redesignated and renumbered as a new Art. XI. Subsequently, the city enacted Ord. No. 88.32, adopted April 28, 1988, § 5 of which created a new Ch. 16A, transferring the provisions of Ch. 16, Arts, IX—XI to said Ch. 16A as Arts. I—III, and providing that these provisions be renumbered to be consistent with the Tempe City Code.

Cross references—Advertising and signs, Ch. 3; Alcoholic beverages, Ch. 4; Amusements, Ch. 5, licensing of bicycles, § 7-21, et seq.; maintenance electrician's or plumber's certificate of registration, § 8-104.9; Mobile homes and trailer coaches, Ch. 18; Peddlers, solicitors and itinerant merchants, Ch. 24.

Sec. 16-100. General definitions.

For the purposes of this Chapter, the following definitions apply:

Assembler means a person who unites or combines products, wares, or articles of manufacture so as to produce a change in form or substance of such items without changing or altering component parts.

Broker means any person engaged or continuing in business who acts for another for a consideration in the conduct of a business activity taxable under this Chapter, and who receives for his principal all or part of the gross income from the taxable activity.

Business includes all activities or acts, personal or corporate, engaged in or caused to be engaged in with the object of gain, benefit, or advantage, either directly or indirectly, but does not include either: casual activities or sales, or the transfer of electricity from a solar photovoltaic generation system to an electric utility distribution system.

Business day means any day of the week when the Tax Collector's office is open for the public to conduct the Tax Collector's business.

Casual activity or sale means a transaction of an isolated nature made by a person who neither represents himself to be nor is engaged in a business subject to a tax imposed by this Chapter. However, no sale, rental, license for use, or lease transaction concerning real property nor any activity entered into by a business taxable by this Chapter shall be treated, or be exempt, as casual. This definition shall include sales of used capital assets, provided that the volume and frequency of such sales do not indicate that the seller regularly engages in selling such property.

Combined taxes means the sum of all applicable Arizona Transaction Privilege and Use Taxes; all applicable transportation taxes imposed upon gross income by this County as authorized by Article III, Chapter 6, Title 42, Arizona Revised Statutes; and all applicable taxes imposed by this Chapter.

Commercial property is any real property, or portion of such property, used for any purpose other than lodging or lodging space, including structures built for lodging but used otherwise, such as model homes, apartments used as offices, etc.

Communications channel means any line, wire, cable, microwave, radio signal, light beam, telephone, telegraph, or any other electromagnetic means of moving a message.

Construction contracting refers to the activity of a construction contractor.

Construction contractor means a person who undertakes to or offers to undertake to, or purports to have the capacity to undertake to, or submits a bid to, or does himself or by or through others, construct, alter, repair, add to, subtract from, improve, move, wreck, or demolish any building, highway, road, railroad, excavation, or other structure, project, development, or improvement to real property, or to do any part thereof. "Construction contractor" includes subcontractors, specialty contractors, prime contractors, and any person receiving consideration for the general supervision and/or coordination of such a construction project except for

remediation contracting. This definition shall govern without regard to whether or not the construction contractor is acting in fulfillment of a contract.

Delivery (of notice) by the Tax Collector means "receipt (of notice) by the taxpayer".

Delivery, installation or other direct customer services means services or labor, excluding repair labor, provided by a taxpayer to or for his customer at the time of transfer of tangible personal property; provided further that the charge for such labor or service is separately billed to the customer and maintained separately in the taxpayer's books and records.

Engaging, when used with reference to engaging or continuing in business, includes the exercise of corporate or franchise powers.

Equivalent excise tax means either:

(1) A Privilege or Use Tax levied by another Arizona municipality upon the transaction in question, and paid either to such Arizona municipality directly or to the vendor; or

(2) An excise tax levied by a political subdivision of a state other than Arizona upon the transaction in question, and paid either to such jurisdiction directly or to the vendor; or

(3) An excise tax levied by a Native American Government organized under the laws of the federal government upon the transaction in question, and paid either to such jurisdiction directly or to the vendor.

Federal government means the United States Government, its departments and agencies; but not including national banks or federally chartered or insured banks, savings and loan institutions, or credit unions.

Food means any items intended for human consumption as defined by rules and regulations adopted by the Department of Revenue, State of Arizona, pursuant to A.R.S. Section 42-5106. Under no circumstances shall "food" include alcoholic beverages or tobacco, or food items purchased for use in conversion to any form of alcohol by distillation, fermentation, brewing, or other process. Under no circumstances shall "food" include an edible product, beverage, or ingredient infused, mixed, or in any way combined with medical marijuana or an active ingredient of medical marijuana.

Hotel means any public or private hotel, inn, hostelry, tourist home, house, motel, roominghouse, apartment house, trailer, or other lodging place within the City offering lodging, wherein the owner thereof, for compensation, furnishes lodging to any transient, except foster homes, rest homes, sheltered care homes, nursing homes, or primary health care facilities.

Jet fuel means jet fuel as defined in A.R.S. Section 42-5351.

Job printing means the activity of copying or reproducing an article by any means, process, or method. "Job printing" includes engraving of printing plates, embossing, copying, micrographics, and photo reproduction.

Lessee includes the equivalent person in a rental or licensing agreement for all purposes of this Chapter.

Lessor includes the equivalent person in a rental or licensing agreement for all purposes of this Chapter.

Licensing (for use) means any agreement between the user ("licensee") and the owner or the owner's agent ("licensor") for the use of the licensor's property whereby the licensor receives consideration, where such agreement does not qualify as a "sale" or "lease" or "rental" agreement.

Lodging (lodging space) means any room or apartment in a hotel or any other provider of rooms, trailer spaces, or other residential dwelling spaces; or the furnishings or services and accommodations accompanying the use and possession of said dwelling space, including storage or parking space for the property of said tenant.

Manufactured buildings means a manufactured home, mobile home or factory built building, as defined in A.R.S. Section 41-2142.

Manufacturer means a person engaged or continuing in the business of fabricating, producing, or manufacturing products, wares, or articles for use from other forms of tangible personal property, imparting to such new forms, qualities, properties, and combinations.

Medical marijuana means "marijuana" used for a "medical use" as those terms are defined in A.R.S. Section 36-2801.

Mining and metallurgical supplies means all tangible personal property acquired by persons engaged in activities defined in subsection 16-432 for such use. This definition shall not include:

(1) Janitorial equipment and supplies.

(2) Office equipment, office furniture, and office supplies.

(3) Motor vehicles licensed for use upon the highways of the State.

Modifier means a person who reworks, changes, or adds to products, wares, or articles of manufacture.

Nonprofit entity means any entity organized and operated exclusively for charitable purposes, or operated by the Federal Government, the State, or any political subdivision of the State.

Occupancy (of real property) means any occupancy or use, or any right to occupy or use, real property including any improvements, rights, or interests in such property.

Out-of-city sale means the sale of tangible personal property and job printing if all of the following occur:

(1) Transference of title and possession occur without the City; and

(2) The stock from which such personal property was taken was not within the corporate limits of the City; and

(3) The order is received at a permanent business location of the seller located outside the City; which location is used for the substantial and regular conduct of such business sales activity. In no event shall the place of business of the buyer be determinative of the situs of the receipt of the order.

For the purpose of this definition it does not matter that all other indicia of business occur within the City, including, but not limited to, accounting, invoicing, payments, centralized purchasing, and supply to out-of-city storehouses and out-of-city retail branch outlets from a primary storehouse within the City.

Out-of-state sale means the sale of tangible personal property and job printing if all of the following occur:

(1) The order is placed from without the State of Arizona; and

(2) The property is delivered to the buyer at a location outside the State; and

(3) The property is purchased for use outside the State.

Owner-builder means an owner or lessor of real property who, by himself or by or through others, constructs or has constructed or reconstructs or has reconstructed any improvement to real property.

Person means an individual, firm, partnership, joint venture, association, corporation, estate, trust, receiver, syndicate, broker, the Federal Government, this State, or any political subdivision or agency of this State. For the purposes of this Chapter, a person shall be considered a distinct and separate person from any general or limited partnership or joint venture or other association with which such person is affiliated. A subsidiary corporation shall be considered a separate person from its parent corporation for purposes of taxation of transactions with its parent corporation.

Prosthetic means any of the following tangible personal property if such items are prescribed or recommended by a licensed podiatrist, chiropractor, dentist, physician or surgeon, naturopath, optometrist, osteopathic physician or surgeon, psychologist, hearing aid dispenser, physician assistant, nurse practitioner or veterinarian:

(1) Any man-made device for support or replacement of a part of the body, or to increase acuity of one of the senses. Such items include: prescription eyeglasses; contact lenses; hearing aids; artificial limbs or teeth; neck, back, arm, leg, or similar braces.

(2) Insulin, insulin syringes, and glucose test strips sold with or without a prescription.

(3) Hospital beds, crutches, wheelchairs, similar home health aids, or corrective shoes.

(4) Drugs or medicine, including oxygen.

(5) Equipment used to generate, monitor, or provide health support systems, such as respiratory equipment, oxygen concentrator, dialysis machine.

(6) Durable medical equipment which has a federal health care financing administration common procedure code, is designated reimbursable by Medicare, can withstand repeated use, is primarily and customarily used to serve a medical purpose, is generally not useful to a person in the absence of illness or injury and is appropriate for use in the home.

(7) Orthodontic devices dispensed by a medical professional who is licensed under A.R.S. Title 31, Chapter 11 to a patient as part of the practice of dentistry.

(8) Under no circumstances shall "prosthetic" include medical marijuana regardless of whether it is sold or dispensed pursuant to a prescription, recommendation, or written certification by any authorized person.

Qualifying community health center means:

(1) An entity that is recognized as nonprofit under 501(c)(3) of the United States Internal Revenue Code, that is a community-based, primary care clinic that has a community-based board of directors and that is either:

(a) The sole provider of primary care in the community.

(b) A nonhospital affiliated clinic that is located in a federally designated medically underserved area in this state.

(2) Includes clinics that are being constructed as qualifying community health centers.

Qualifying health care organization means an entity that is recognized as nonprofit under Section 501(c) of the United States Internal Revenue Code and that uses at least eighty percent of all monies that it receives from all sources each year only for health and medical related educational and charitable services, as documented by annual financial audits prepared by an independent certified public accountant, performed according to generally accepted accounting standards and filed annually with the Arizona Department of Revenue. Monies that are used, saved or invested to lease, purchase or construct a facility for health and medical related education and charitable services are included in the eighty percent (80%) requirement.

Qualifying hospital means:

(1) A licensed hospital which is organized and operated exclusively for charitable purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(2) A licensed nursing care institution or a licensed residential care institution or a residential care facility operated in conjunction with a licensed nursing care institution or a licensed kidney dialysis center, which provides medical services, nursing services or health related services and is not used or held for profit.

(3) A hospital, nursing care institution or residential care institution which is operated by the federal government, this State or a political subdivision of this State.

(4) A facility that is under construction and that on completion will be a facility under subdivision (1), (2) or (3) of this paragraph.

Receipt (of notice) by the taxpayer means the earlier of actual receipt or the first attempted delivery by certified United States mail to the taxpayer's address of record with the Tax Collector.

Remediation means those actions that are reasonable, necessary, cost-effective and technically feasible in the event of the release or threat of release of hazardous substances into the environment such that the waters of the state are or may be affected, such action as may be necessary to monitor, assess and evaluate such release or threat of release, actions of remediation, removal or disposal of hazardous substances or taking such other actions as may be necessary to prevent, minimize or mitigate damage to the public health or welfare or to the waters of the state which may otherwise result from a release or threat of release of a hazardous substance that will or may affect the waters of the state. Remediation activities include the use of biostimulation with indigenous microbes and bioaugmentation using microbes that are nonpathogenic, nonopportunistic and that are naturally occurring. Remediation activities may include community information and participation costs and providing an alternative drinking water supply.

Rental equipment means tangible personal property sold, rented, leased, or licensed to customers to the extent that the item is actually used by the customer for rental, lease, or license to others; provided that:

(1) The vendee is regularly engaged in the business of renting, leasing, or licensing such property for a consideration; and

(2) The item so claimed as "rental equipment" is not used by the person claiming the exemption for any purpose other than rental, lease, or license for compensation, to an extent greater than fifteen percent (15%) of its actual use.

Rental supply means an expendable or nonexpendable repair or replacement part sold to become part of "rental equipment", provided that:

(1) The documentation relating to each purchased item so claimed specifically itemizes to the vendor the actual item of "rental equipment" to which the purchased item is intended to be attached as a repair or replacement part; and

(2) The vendee is regularly engaged in the business of renting, leasing, or licensing such property for a consideration; and

(3) The item so claimed as "rental equipment" is not used by the person claiming the exemption for any purpose other than rental, lease, or license for compensation, to an extent greater than fifteen percent (15%) of its actual use.

Repairer means a person who restores or renews products, wares, or articles of manufacture.

Resides within the city means in cases other than individuals, whose legal addresses are determinative of residence, the engaging, continuing, or conducting of regular business activity within the City.

Restaurant means any business activity where articles of food, drink, or condiment are customarily prepared or served to patrons for consumption on or off the premises, also including bars, cocktail lounges, the dining rooms of hotels, and all caterers. For the purposes of this Chapter, a "fast food" business, which includes street vendors and mobile vendors selling in public areas or at entertainment or sports or similar events, who prepares or sells food or drink for consumption on or off the premises is considered a "restaurant", and not a "retailer".

Retail sale (sale at retail) means the sale of tangible personal property, except the sale of tangible person property to a person regularly engaged in the business of selling such property.

Retailer means any person engaged or continuing in the business of sales of tangible personal property at retail.

Sale means any transfer of title or possession, or both, exchange, barter, conditional or otherwise, in any manner or by any means whatsoever, including consignment transactions and auctions, of property for a consideration. "Sale" includes any transaction whereby the possession of such property is transferred but the seller retains the title as security for the payment of the price. "Sale" also includes the fabrication of tangible personal property for consumers who, in whole or in part, furnish either directly or indirectly the materials used in such fabrication work.

Solar daylighting means a device that is specifically designed to capture and redirect the visible portion of the solar beam, while controlling the infrared portion, for use in illuminating interior building spaces in lieu of artificial lighting.

Solar energy device means a system or series of mechanisms designed primarily to provide heating, to provide cooling, to produce electrical power, to produce mechanical power, to provide solar daylighting or to provide any combination of the foregoing by means of collecting and transferring solar generated energy into such uses either by active or passive means, including wind generator systems that produce electricity. Solar energy systems may also have the capability of storing solar energy for future use. Passive systems shall clearly be designed as a solar energy device, such as a trombe wall, and not merely as a part of a normal structure, such as a window.

Speculative builder means either:

(1) An owner-builder who sells or contracts to sell, at anytime, improved real property (as provided in Section 16-416), consisting of:

(a) Custom, model, or inventory homes, regardless of the stage of completion of such homes; or

(b) Improved residential or commercial lots without a structure; or

(2) An owner-builder who sells or contracts to sell improved real property, other than improved real property specified in subsection (1) above:

(a) Prior to completion; or

(b) Before the expiration of twenty-four (24) months after the improvements of the real property sold are substantially complete.

Substantially complete means the construction contracting or reconstruction contracting:

(1) Has passed final inspection or its equivalent; or

(2) Certificate of occupancy or its equivalent has been issued; or

(3) Is ready for immediate occupancy or use.

Supplier means any person who rents, leases, licenses, or makes sales of tangible personal property within the City, either directly to the consumer or customer or to wholesalers, jobbers, fabricators, manufacturers, modifiers, assemblers, repairers, or those engaged in the business of providing services which involve the use, sale, rental, lease, or license of tangible personal property.

Tax Collector means the Finance and Technology Director or his designee or agent for all purposes under this Chapter.

Taxpayer means any person liable for any tax under this Chapter.

Taxpayer Problem Resolution Officer means the individual designated by the City to perform the duties identified in Sections 16-515 and 16-516. In cities with a population of 50,000 or more, the Taxpayer Problem Resolution Officer shall be an employee of the City. In cities with a population of less than 50,000, the Taxpayer Problem Resolution Officer need not be an employee of the City. Regardless of whether the Taxpayer Problem Resolution Officer is or is not an employee of the City, the Taxpayer Problem Resolution Officer shall have substantive knowledge of taxation. The identity of and telephone number for the Taxpayer Problem Resolution Officer can be obtained from the Tax Collector.

Telecommunication service means any service or activity connected with the transmission or relay of sound, visual image, data, information, images, or material over a communications channel or any combination of communications channels.

Transient means any person who either at the person's own expense or at the expense of another obtains lodging space or the use of lodging space on a daily or weekly basis, or on any other basis for less than thirty (30) consecutive days.

Utility service means the producing, providing, or furnishing of electricity, electric lights, current, power, gas (natural or artificial), or water to consumers or ratepayers.
(Ord. No. 87.17, § 1, 4-23-87; Ord. No. 88.32, § 1(1), (2), 4-28-88; Ord. No. 90.25, 7-12-90; Ord. No. 95.03, 1-12-95; Ord. No. 96.42, 12-12-96; Ord. No. 96.43, 12-12-96; Ord. No. 98.12, 3-12-98; Ord. No. 98.14, 3-12-98; Ord. No. 98.37, 6-25-98; Ord. No. 2007.20, 4-19-07; Ord. No. 2008.26, 8-14-08; Ord. No. 2011.30, 9-8-11; Ord. No. O2014.01, 1-9-14)

Sec. 16-110. Definitions—Income-producing capital equipment.

(a) The following tangible personal property, other than items excluded in subsection (d) below, shall be deemed "income-producing capital equipment" for the purposes of this Chapter:

(1) Machinery or equipment used directly in manufacturing, processing, fabricating, job printing, refining or metallurgical operations. The terms "manufacturing", "processing", "fabricating", "job printing", "refining", and "metallurgical" as used in this paragraph refer to and include those operations commonly understood within their ordinary meaning. "Metallurgical operations" includes leaching, milling, precipitating, smelting and refining.

(2) Mining machinery, or equipment, used directly in the process of extracting ores or minerals from the earth for commercial purposes, including equipment required to prepare the materials for extraction and handling, loading or transporting such extracted material to the surface. "Mining" includes underground, surface and open pit operations for extracting ores and minerals.

(3) Tangible personal property, sold to persons engaged in business classified under the telecommunications classification, consisting of central office switching equipment; switchboards; private branch exchange equipment; microwave radio equipment, and carrier equipment including optical fiber, coaxial cable, and other transmission media which are components of carrier systems.

(4) Machinery, equipment, or transmission lines used directly in producing or transmitting electrical power, but not including distribution. Transformers and control equipment used at transmission substation sites constitute equipment used in producing or transmitting electrical power.

(5) Pipes or valves four inches (4") in diameter or larger and related equipment, used to transport oil, natural gas, artificial gas, water, or coal slurry. For the purpose of this Section, related equipment includes: compressor units, regulators, machinery and equipment, fittings, seals and any other parts that are used in operating the pipes or values.

(6) Aircraft, navigational and communication instruments, and other accessories and related equipment sold to:

(A) A person holding a federal certificate of public convenience and necessity or foreign air carrier permit for air transportation for use as or in conjunction with or becoming a part of aircraft to be used to transport persons, property or United States mail in intrastate, interstate or foreign commerce.

(B) Any foreign government for use by such government outside of this State.

(C) Persons who are not residents of this State and who will not use such property in this State other than in removing such property from this State. This subdivision also applies to corporations that are not incorporated in this State, regardless of maintaining a place of business in this State, if the principal corporate office is located outside this State and the property will not be used in this State other than in removing the property from this State.

(7) Machinery, tools, equipment and related supplies used or consumed directly in repairing, remodeling or maintaining aircraft, aircraft engines or aircraft component parts by or on behalf of a certificated or licensed carrier of persons or property.

(8) Railroad rolling stock, rails, ties and signal control equipment used directly to transport persons or property.

(9) Machinery or equipment used directly to drill for oil or gas or used directly in the process of extracting oil or gas from the earth for commercial purposes.

(10) Buses or other urban mass transit vehicles which are used directly to transport persons or property for hire or pursuant to a governmentally adopted and controlled urban mass transportation program and which are sold to bus companies holding a federal certificate of convenience and necessity or operated by a city, town or other governmental entity or by any person contracting with such governmental entity as part of a governmentally adopted and controlled program to provide urban mass transportation.

(11) Metering, monitoring, receiving, and transmitting equipment acquired by persons engaged in the business of providing utility services or telecommunications services; but only to the extent that such equipment is to be used by the customers of such persons and such persons separately charge or bill their customers for use of such equipment.

(12) Groundwater measuring devices required under A.R.S. Section 45-604.

(13) Machinery or equipment used in research and development. In this paragraph, "research and development" means basic and applied research in the sciences and engineering, and designing, developing or testing prototypes, processes or new products, including research and development of computer software that is embedded in or an integral part of the prototype or new product or that is required for machinery or equipment otherwise exempt under this Section to function effectively. Research and development do not include manufacturing quality control, routine consumer product testing, market research, sales promotion, sales service, research in social sciences or psychology, computer software research that is not included in the definition of research and development, or other non-technological activities or technical services.

(14) (Reserved)

(15) Included in income-producing capital equipment are liquid, solid or gaseous chemicals used in manufacturing, processing, fabricating, mining, refining, metallurgical operations, research and development or job printing, if using or consuming the chemicals, alone or as part of an integrated system of chemicals, involving direct contact with the materials from which the product is produced for the purpose of causing or permitting a chemical or physical change to occur in the materials as part of the production process. This subsection does not include chemicals that are used or consumed in activities such as packaging, storage or transportation but does not affect any deduction for such chemicals that is otherwise provided by this code. Chemicals meeting the requirements of this subsection are deemed not to be expendable under subsection (d) of this Section.

(16) Cleanrooms that are used for manufacturing, processing, fabrication or research and development, as defined in paragraph (13) of this subsection, of semiconductor products. For purposes of this paragraph, "cleanroom" means all property that comprises or creates an environment where humidity, temperature, particulate matter and contamination are precisely controlled within specified parameters, without regard to whether the property is actually contained within that environment or whether any of the property is affixed to or incorporated into real property. Cleanroom:

(A) Includes the integrated systems, fixtures, piping movable partitions, lighting and all property that is necessary or adapted to reduce contamination or to control airflow, temperature, humidity, chemical purity or other environmental conditions or manufacturing tolerances, as well as the production machinery and equipment operating in conjunction with the cleanroom environment.

(B) Does not include the building or other permanent, nonremovable component of the building that houses the cleanroom environment.

(17) Machinery and equipment that are purchased by or on behalf of the owners of a soundstage complex and primarily used for motion picture, multimedia or interactive video production in the complex. This paragraph applies only if the initial construction of the soundstage complex begins after June 30, 1996 and before January 1, 2002 and the machinery and equipment are purchased before the expiration of five years after the start of initial construction. For purposes of this paragraph:

(A) "Motion picture, multimedia or interactive video production" includes products for theatrical and television release, educational presentations, electronic retailing, documentaries, music videos, industrial films, cd-rom, video game production, commercial advertising and television episode production and other genres that are introduced through developing technology.

(B) "Soundstage complex" means a facility of multiple stages including production offices, construction shops and related areas, prop and costume shops, storage areas, parking for production vehicles and areas that are leased to businesses that complement the production needs and orientation of the overall facility.

(18) Tangible personal property that is used by either of the following to receive, store, convert, produce, generate, decode, encode, control or transmit telecommunications information:

(A) Any direct broadcast satellite television or data transmission service that operates pursuant to 47 Code of Federal Regulations parts 25 and 100.

(B) Any satellite television or data transmission facility, if both of the following conditions are met:

(i) Over two-thirds of the transmissions, measured in megabytes, transmitted by the facility during the test period were transmitted to or on behalf of one or more direct broadcast satellite televisions or data transmission services that operate pursuant to 47 Code of Federal Regulations parts 25 and 100.

(ii) Over two-thirds of the transmissions, measured in megabytes, transmitted by or on behalf of those direct broadcast television or data transmission services during the test period were transmitted by the facility to or on behalf of those services.

For purposes of subdivision (B) of this paragraph, "test period" means the three hundred sixty-five day period beginning on the later of the date on which the tangible personal property is purchased or the date on which the direct broadcast satellite television or data transmission service first transmits information to its customers.

(19) Machinery and equipment that is used directly in the feeding of poultry, the environmental control of housing for poultry, the movement of eggs within a production and packaging facility or the sorting or cooling of eggs. This exemption does not apply to vehicles used for transporting eggs.

(20) Machinery or equipment, including related structural components, that is employed in connection with manufacturing, processing, fabricating, job printing, refining, mining, natural gas pipelines, metallurgical operations, telecommunications, producing or transmitting electricity or research and development that is used directly to meet or exceed rules or regulations adopted by the Federal Energy Regulatory Commission, the United States Environmental Protection Agency, the United States Nuclear Regulatory Commission, the Arizona Department of Environmental Quality or a political subdivision of this State to prevent, monitor, control or reduce land, water or air pollution.

(21) Machinery or equipment that enables a television station to originate and broadcast or to receive and broadcast digital television signals and that was purchased to facilitate compliance with the Telecommunications Act of 1996 (P.L. 104-104; 110 Stat. 56; 47 United States Code Section 336) and the Federal Communications Commission order issued April 21, 1997, 47 Code of Federal Regulations Part 73. This paragraph does not exempt any of the following:

(A) Repair or replacement parts purchased for the machinery or equipment described in this paragraph.

(B) Machinery or equipment purchased to replace machinery or equipment for which an exemption was previously claimed and taken under this paragraph.

(C) Any machinery or equipment purchased after the television station has ceased analog broadcasting, or purchased after November 1, 2009, whichever occurs first.

(b) The term "income-producing capital equipment" shall further include ancillary machinery and equipment used for the treatment of waste products created by the business activities which are allowed to purchase "income-producing capital equipment" defined in subsection (a) above.

(c) The term "income-producing capital equipment" shall further include repair and replacement parts, other than the items in subsection (d) below, where the property is acquired to become an integral part of another item itemized in subsections (a) or (b) above.

(d) The tangible personal property defined as income-producing capital equipment in this Section shall <u>not</u> include:

(1) *Expendable materials*. For purposes of this paragraph, expendable materials do not include any of the categories of tangible personal property specified in subsections (a), (b) or (c) of this Section regardless of the cost or useful life of that property.

(2) Janitorial equipment and hand tools.

(3) Office equipment, furniture, and supplies.

(4) Tangible personal property used in selling or distributing activities.

(5) Motor vehicles required to be licensed by the State of Arizona, except buses or other urban mass transit vehicles specifically exempted pursuant to subsection (a)(10) above without regard to the use of such motor vehicles.

(6) Shops, buildings, docks, depots, and all other materials of whatever kind or character not specifically included as exempt.

(7) Motors and pumps used in drip irrigation systems.

(e) For the purposes of this Section:

(1) "Aircraft" includes:

(A) An airplane flight simulator that is approved by the Federal Aviation Administration for use as a Phase II or higher flight simulator under Appendix H, 14 Code of Federal Regulations Part 121.

(B) Tangible personal property that is permanently affixed or attached as a component part of an aircraft that is owned or operated by a certificated or licensed carrier of persons or property.

(2) "Other accessories and related equipment" includes aircraft accessories and equipment such as ground service equipment that physically contact aircraft at some point during the overall carrier operation.

(Ord. No. 87.17, § 1(16-110), 4-23-87; Ord. No. 95.03, 1-12-95; Ord. No. 98.37, 06-25-98; Ord. No. 99.40, 12-16-99)

Sec. 16-115. Definitions—Computer software; custom computer programming.

(a) *Computer software* means any computer program, part of such a program, or any sequence of instructions for automatic data processing equipment. Computer software which is not "custom computer programming" is deemed to be tangible personal property for the purposes of this Chapter, regardless of the method by which title, possession, or right to use the software is transferred to the user.

(b) *Custom computer programming* means any computer software which is written or prepared exclusively for a customer and includes those services represented by separately stated charges for the modification of existing prewritten programs when the modifications are written or prepared exclusively for a customer.

(1) The term does not include a prewritten program which is held or existing for general or repeated sale, lease or license, even if the program was initially developed on a custom basis for in-house, or for a single customer's, use.

(2) Modification to an existing prewritten program to meet the customer's needs is custom computer programming only to the extent of the modification, and only to the extent that the actual amount charged for the modification is separately stated on invoices, statements, and other billing documents supplied to the customer.

(Ord. No. 87.17, § 1, 4-23-87)

Sec. 16-120. Repealed.

(Ord. No. 87.17, § 1, 4-23-87; Ord. No. 2010.20, 6-24-10; Ord. No. O2014.01, 1-9-14)

ARTICLE II. DETERMINATION OF GROSS INCOME

Sec. 16-200. Determination of gross income—In general.

(a) Gross income includes:

(1) The value proceeding or accruing from the sale of property, the providing of service, or both.

(2) The total amount of the sale, lease, license for use, or rental price at the time of such sale, rental, lease, or license.

(3) All receipts, cash, credits, barter, exchange, reduction of or forgiveness of indebtedness, and property of every kind or nature derived from a sale, lease, license for use, rental, or other taxable activity.

(4) All other receipts whether payment is advanced prior to, contemporaneous with, or deferred in whole or in part subsequent to the activity or transaction.

(b) Barter, exchange, trade-outs, or similar transactions are includable in gross income at the fair market value of the service rendered or property transferred, whichever is higher, as they represent consideration given for consideration received.

(c) No deduction or exclusion is allowed from gross income on account of the cost of the property sold, the time value of money, expense of any kind or nature, losses, materials used, labor or service performed, interest paid, or credits granted.

(d) For the purposes of this Chapter, the total amount of gross income, gross receipts or gross proceeds of sales for nuclear fuel shall be deemed to be the value of the purchase price of uranium oxide used in producing the fuel. The tax imposed by this Chapter may be imposed only once for any one quantity or batch of nuclear fuel regardless of the number of transactions or financing arrangements which may occur with respect to that nuclear fuel.
(Ord. No. 87.17, § 1, 4-23-87; Ord. No. O2014.01, 1-9-14)

Sec. 16-210. Determination of gross income—Transactions between affiliated companies or persons.

In transactions between affiliated companies or persons, or in other circumstances where the relationship between the parties is such that the gross income from the transaction is not indicative of the market value of the subject matter of the transaction, the Tax Collector shall determine the "market value" upon which the City Privilege and Use Taxes shall be levied. "Market value" shall correspond as nearly as possible to the gross income from similar transactions of like quality or character by other taxpayers where no common interest exists between the parties, but otherwise under similar circumstances and conditions.
(Ord. No. 87.17, § 1, 4-23-87)

Sec. 16-220. Determination of gross income—Artificially contrived transactions.

The Tax Collector may examine any transaction, reported or unreported, if, in his opinion, there has been or may be an evasion of the taxes imposed by this Chapter and to estimate the amount subject to tax in cases where such evasion has occurred. The Tax Collector shall disregard any transaction which has been undertaken in an artificial manner in order to evade the taxes imposed by this Chapter.
(Ord. No. 87.17, § 1, 4-23-87)

Sec. 16-230. Determination of gross income based upon method of reporting.

The method of reporting chosen by a taxpayer, as provided in Section 16-520, necessitates the following adjustments to gross income for all purposes under this Chapter:

(a) *Cash basis*. When a person elects to report and pay taxes on a cash basis, gross income for the reporting period shall include:

(1) The total amounts received on "paid in full" transactions, against which are allowed all applicable deductions and exclusions; and

(2) All amounts received on accounts receivable, conditional sales contract, or other similar transactions, against which no deductions and no exclusions from gross income are allowed. Interest on finance contracts may be deducted if separately itemized on all books and records.

(b) *Accrual basis.* When a person elects to report and pay taxes on an accrual basis, gross income shall include all gross income for the applicable period regardless of whether receipts are for cash, credit, conditional, or partially deferred transactions, and regardless of whether or not any security document or instrument is sold, assigned, or otherwise transferred to another. Persons reporting on the accrual basis may deduct bad debts, provided that:

(1) The amount deducted for the bad debt must be deducted from gross income of the month in which the actual charge-off was made, and only to the extent that such amount was actually charged-off, and also only to the extent that such amount is or was included as taxable gross income; and

(2) If any amount is subsequently collected on such charged-off account, it shall be included in gross income for the month in which it was collected, without deduction for expense of collection.
(Ord. No. 87.17, § 1, 4-23-87; Ord. No. 96.43, 12-12-96)

Sec. 16-240. Exclusion of cash discounts, returns, refunds, trade-in values, vendor-issued coupons, and rebates from gross income.

(a) The following items are not included in gross income:

(1) Cash discounts allowed by the vendor for timely payment, but only discounts allowed against taxable gross income.

(2) The value of property returned by customers to the extent of the amount actually refunded either in cash or by credit and the amount refunded was included in taxable gross income.

(3) The trade-in allowance for tangible personal property accepted as payment, not to exceed the full sales price for any tangible personal property sold, when the full sales price is included in taxable gross income. Trade-in allowances are not allowed for manufactured buildings taxable under Section 16-427.

(4) When coupons issued by a vendor are later accepted by the vendor as a discount against the transaction, the discount may be excluded from gross income as a cash discount. Amounts credited or refunded by a vendor for redemption of coupons issued by any person other than the vendor may not be excluded from gross income.

(5) Rebates issued by the vendor to a customer as a discount against the transaction may be excluded from gross income as a cash discount. Rebates issued by a person other than the vendor may not be excluded from gross income, even when the vendee assigns his right to the rebate to the vendor.

(6) In computing the tax base, gross proceeds of sales or gross income does not include a manufacturer's cash rebate on the sales price of a motor vehicle if the buyer assigns the buyer's right in the rebate to the retailer.

(b) If the amount specified in subsection (a) above is credited by a vendor subsequent to the reporting period in which the original transaction occurs, such amount may be excluded from the taxable gross income of that subsequent reporting period, but only to the extent that the excludable amount was reported as taxable gross income in that prior reporting period.
(Ord. No. 87.17, § 1, 4-23-87; Ord. No. 95.03, 1-12-95; Ord. No. 96.43, 12-12-96)

Sec. 16-250. Exclusion of combined taxes from gross income; itemization; notice; limitations.

(a) *When tax is separately charged and/or collected.* The total amount of gross income shall be exclusive of combined taxes only when the person upon whom the tax is imposed shall establish to the satisfaction of the Tax Collector that such tax has been added to the total price of the transaction. The taxpayer must provide to his customer and also keep a reliable record of the actual tax charged or collected, shown by cash register tapes, sales tickets, or other accurate record, separating net transaction price and combined tax. If at any time the Tax Collector cannot ascertain from the records kept by the taxpayer the total or amounts billed or collected on account of combined taxes, the claimed taxes collected may not be excluded from gross income, unless such records are completed or clarified to the satisfaction of the Tax Collector.

(1) *Remittance of all tax charged and/or collected.* When an added charge is made to cover City (or combined) Privilege and Use Taxes, the person upon whom the tax is imposed shall pay the full amount of the City taxes due, whether collected by him or not, and in the event he collects more than the amount due he shall remit the excess to the Tax Collector. In the event the Tax Collector cannot ascertain from the records kept by the taxpayer the total or amounts of taxes

collected by him, and the Tax Collector is satisfied that the taxpayer has collected taxes in an amount in excess of the tax assessed under this Chapter, the Tax Collector may determine the amount collected and collect the tax so determined in the manner provided in this Chapter.

(2) *Itemization*. A taxpayer, in order to be entitled to exclude from his gross income any amounts paid to him by customers for combined taxes passed on to the customer, must prove that he has provided his customer with a written record of the transaction showing at a minimum the price before the tax, the combined taxes, and the total cost. This shall be in addition to the record required to be kept under subsection (a) above.

(b) *When tax has been neither separately charged nor separately collected.* When the person upon whom the tax is imposed shall establish by means of invoices, sales tickets, or other reliable evidence, that no added charge was made to cover combined taxes, the taxpayer may exclude tax collected from such income by dividing such taxable gross income by 1.00 plus a decimal figure representing the effective combined tax rate expressed as a fraction of 1.00.
(Ord. No. 87.17, § 1, 4-23-87)

Sec. 16-260. Exclusion of fees and taxes from gross income; limitations.

(a) There shall be excluded from gross income of vendors of motor vehicles those motor vehicle registration fees, license fees and taxes, and lieu taxes imposed pursuant to Title 28, Arizona Revised Statutes in connection with the initial purchase of a motor vehicle, but only to the extent that such taxes or fees or both have been separately itemized and collected from the purchaser of the motor vehicle by the vendor, actually remitted to the proper registering, licensing, and taxing authorities, and the provisions of Article III, regarding recordkeeping, are met. For the purpose of the exclusion provided by this subsection only, the terms vendor and vendee shall also apply to a lessor and lessee, respectively, of a motor vehicle if, in addition to all other requirements of this subsection, the lease agreement specifically requires the lessee to pay such fees or taxes, and such amounts are separately itemized in the documentation provided to the lessee.

(b) There shall be excluded from gross income of vendors at retail of heavy trucks and trailers, the amount attributable to Federal Excise Taxes imposed by 26 U.S.C. Section 4051, but only to the extent that the provisions of Article III, relating to recordkeeping, have been met.

(c) There shall be excluded from gross income the following fees, taxes, and lieu taxes, but only to the extent that such taxes or fees or both have been separately itemized and collected from the purchaser by the vendor, actually remitted to the proper registering, licensing, and taxing authorities, and the provisions of Article III, regarding recordkeeping, are met:

(1) Emergency telecommunication services excise tax imposed pursuant to A.R.S. Section 42-5252. "Emergency telecommunication services" means telecommunication services or systems that use number 911 or a similarly designated telephone number for emergency calls;

(2) The telecommunication devices for the deaf and the severely hearing and speech impaired excise tax imposed pursuant to A.R.S. Section 42-5252;

(3) Federal excise taxes on communications services as imposed by 26 U.S.C. Section 4251;

(4) Car rental surcharge imposed pursuant to A.R.S. Section 48-4234;

(5) Federal excise taxes on passenger vehicles as imposed by 26 U.S.C. Section 4001(.01);

(6) Waste tire disposal fees, imposed pursuant to A.R.S. Section 44-1302.

(d) There shall be excluded from gross income of vendors of motor vehicles dealer documentation fees, but only to the extent that such fees have been separately itemized and collected from the purchaser of the motor vehicle by the vendor.
(Ord. No. 87.17, § 1, 4-23-87; Ord. No. 96.43, 12-12-96; Ord. No. 2007.20, 4-19-07; Ord. No. 2010.09, 5-6-10)

Sec. 16-265. Reserved.
(Ord. No. 95.03, 1-12-95)

Sec. 16-266. Exclusion of motor carrier revenues from gross income.

There shall be excluded from gross income the gross proceeds of sale or gross income derived from any of the following:

(a) A motor carrier's use on the public highways in this State if the motor carrier is subject to a fee prescribed in A.R.S. Title 28, Chapter 15, Article 4 or A.R.S. Title 28, Chapter 16, Article 4.

(b) Leasing, renting or licensing a motor vehicle subject to and upon which the fee has been paid under A.R.S. Title 28, Chapter 16.

(c) The sale of a motor vehicle and any repair and replacement parts and tangible personal property becoming a part of such motor vehicle, to a motor carrier who is subject to a fee prescribed in A.R.S. Title 28, Chapter 16 and who is engaged in the business of leasing, renting or licensing such property.

(d) For the purposes of these exclusions, "motor carrier" includes a motor vehicle weighing 26,000 pounds or more, a lightweight motor vehicle which weighs 12,001 pounds to 26,000 pounds and a light motor vehicle weighing 12,000 pounds or less, which pay the fee prescribed in A.R.S. Title 28, Chapter 15 or A.R.S. Title 28, Chapter 16.
(Ord. No. 95.03, 1-12-95; Ord. No. 98.37, 06-25-98; Ord. No. 2007.20, 4-19-07)

Sec. 16-270. Exclusion of gross income of persons deemed not engaged in business.

(a) For the purposes of this Section, the following definitions shall apply:

(1) *Federally exempt organization* means an organization which has received a determination of exemption, or qualifies for such exemption, under 26 U.S.C. Section 501(c) and rules and regulations of the Commissioner of Internal Revenue pertaining to same, but not including a "governmental entity", "nonlicensed business", or "public educational entity."

(2) *Governmental entity* means the Federal Government, the State of Arizona, any other state, or any political subdivision, department, or agency of any of the foregoing; provided further that persons contracting with such a governmental entity to operate any part of a governmentally adopted and controlled program to provide urban mass transportation shall be deemed a governmental entity in all activities such person performs when engaged in said contract.

(3) *Non-licensed business* means any person conducting any business activity for gain or profit, whether or not actually realized, which person is not required to be licensed for the conduct or transaction of activities subject to the tax imposed under this Chapter.

(4) *Proprietary club* means any club which has qualified or would otherwise qualify as an exempt club under the provisions of 26 U.S.C. Section 501(c)(7), (8), and (9), notwithstanding the fact that some or all of the members may own a proprietary interest in the property and assets of the club.

(5) *Public educational entity* means any educational entity operated pursuant to any provisions of Title 15, Arizona Revised Statutes.

(b) Transactions which, if conducted by any other person, would produce gross income subject to tax under this Chapter shall not be subject to the imposition of such tax if conducted entirely by a public educational entity; governmental entity, except "proprietary activities" of municipalities as provided by regulation; or non-licensed business.

(c) Transactions which, if conducted by any other person, would produce gross income subject to the tax under this Chapter shall not be subject to the imposition of such tax if conducted entirely by a federally exempt organization or proprietary club with the following exceptions:

(1) Transactions involving proprietary. clubs and organizations exempt under 26 U.S.C. Section 501(c)(7), (8), and (9), where the gross revenue of the activity received from persons other than members and bona fide guests of members is in an amount in excess of fifteen percent (15%) of total gross revenue, as prescribed by Regulation. In the event this fifteen percent (15%) limit is exceeded, the entire gross income of such entity shall be subject to the applicable tax.

(2) Gross income from unrelated business income as that term is defined in 26 U.S.C Section 512, including all statutory definitions and determinations, the rules and regulations of the Commissioner of Internal Revenue, and his administrative interpretations and guidelines.

(3) Fund-raising activities of charitable, religious, or educational organizations, which include events for which admission is charged where attendance exceeds ten thousand (10,000) shall be deemed regularly conducted business activity for purposes of this Chapter.

(d) Except as may be provided elsewhere in this Chapter, transactions where customers are exempt organizations, proprietary clubs, public educational entities, governmental entities, or non-licensed businesses shall be deemed taxable transactions for the purpose of the imposition of taxes under this Chapter, notwithstanding that property so acquired may in fact be resold or leased by the acquiring person to others. In the case of sales, rentals, leases, or licenses to proprietary clubs or exempt organizations, the vendor may be relieved from the responsibility for reporting and paying tax on such income only by obtaining from its vendee a verified statement that includes:

(1) A statement that when the property so acquired is resold, rented, leased, or licensed, that the otherwise exempt vendee chooses, or is required, to pay City Privilege Tax or an equivalent excise tax on its gross in come from such transactions and does in fact file returns on same; and

(2) The Privilege License number of the otherwise exempt vendee; and

(3) Such other information as the Tax Collector may require.

(e) Franchisees or concessionaires operating businesses for or on behalf of any exempt organization, governmental entity, public educational entity, proprietary club, or non-licensed business shall not be considered to be such an exempt organization, club, entity, or non-licensed business, but shall be deemed to be a taxpayer subject to the provisions of this Chapter, except as provided in the definition of governmental entity, regarding urban mass transit.

(f) In any case, if a federally exempt organization, proprietary club, or non-licensed business rents, leases, licenses, or purchases any tangible personal property for its own storage or use, and no City Privilege or Use Tax or equivalent excise tax has been paid on such transaction, said organization, club, or business shall be liable for the Use Tax upon such acquisitions or use of such property.
(Ord. No. 87.17, § 1, 4-23-87)

Sec. 16-280. Reserved.
(Ord. No. 87.17, § 1, 4-23-87)

Sec. 16-285. Reserved.
(Ord. No. 87.17, § 1, 4-23-87)

Sec. 16-290. Reserved.
(Ord. No. 87.17, § 1, 4-23-87)

ARTICLE III. LICENSING AND RECORDKEEPING

Sec. 16-300. Licensing requirements.

(a) The following persons shall make application to the Tax Collector for a Transaction Privilege and Use Tax License and no person shall engage or continue in business or engage in such activities until he shall have such a license:

(1) Every person engaging or continuing in business activities within the City or Town upon which a Transaction privilege tax is imposed by this Chapter.

(2) Every person engaging or continuing in business within the City or Town and storing or using tangible personal property in this municipality upon which a Use Tax is imposed by this Chapter.

(3) Reserved.

(b) For the purpose of determining whether a Transaction Privilege and Use Tax License is required, a person shall be deemed to be "engaging or continuing in business" within the City or Town if:

(1) Engaging in any activity as a principal or broker, the gross receipts of which may be subject to Transaction privilege tax under Article IV of this Chapter, or

(2) Maintaining within the City or Town directly, or if a corporation by a subsidiary, an office, distribution house, sales house, warehouse or other place of business; maintaining within the City or Town directly, or if a corporation by a subsidiary, any real or tangible personal property; or having any agent or other representative operating within the City or Town under the authority of such person, or if a corporation by a subsidiary, irrespective of whether such place of business, property, or agent or other representative is located here permanently or temporarily, or

(3) Soliciting sales, orders, contracts, leases, and other similar forms of business relationships, within the City or Town from customers, consumers, or users located within the City or Town, by means of salesmen, solicitors, agents, representatives, brokers, and other similar agents or by means of catalogs or other advertising, whether such orders are received or accepted within or without this City or Town.

(4) A person shall also be deemed to be "engaging or continuing in business" if engaging in any activity subject to Use Tax under Article VI of this Chapter for business purposes. Individuals who acquire items subject to Use Tax for their own personal use or their family's personal use are not required to obtain a license.

(5) Reserved.

(c) A person engaging in more than one activity subject to Transaction privilege tax at any one business location is not required to obtain a separate license for each activity, provided that, at the time such person makes application for a license, he shall list on such application each category of activity in which he is engaged.

(d) The licensee shall inform the Tax Collector of any changes in his business activities, location, or mailing address within thirty (30) days.

(e) Limitation. The issuance of a Transaction Privilege and Use Tax License by the Tax Collector shall in no way be construed as permission to operate a business activity in violation of any other law or regulation to which such activity may be subject.

(f) Casual activity. For the purposes of this Chapter, individuals engaging in a "casual activity or sale" are not subject to the license requirements imposed under this Article provided that they are only engaged in private sales activities, such as the sale of a personal automobile or garage sale, on no more than three separate occasions during any calendar year.
(Ord. No. 87.17, § 1, 4-23-87; Ord. No. 89.54, 10-12-89; Ord. No. 94.19, 6-30-94; Ord. No. 95.03, 1-12-95; Ord. No. 2008.52, 10-2-08; Ord. No. O2014.73, 12-4-14)

Sec. 16-305. Repealed.
(Ord. No. 87.17, § 1, 4-23-87; Ord. No. 88.32, § 1(3), 4-28-88; Ord. No. 2007.20, 4-19-07; Ord. No. O2014.73, 12-4-14)

Sec. 16-310. Licensing: special requirements.

(a) Partnerships. Application for a Transaction Privilege and Use Tax License for a partnership engaging or continuing in business shall provide, as a minimum, the names and addresses of all general partners. Licenses issued to persons engaging in business as partners, limited or general, shall be in the name of the partnership.

(b) Limited liability companies. Application for a Transaction Privilege and Use Tax License for a Limited Liability Company (LLC) engaging or continuing in business shall provide, as a minimum, the names and addresses of all members and the manager. Licenses issued to persons engaging in business as limited liability companies, shall be in the name of the LLC.

(c) Corporations. Application for a Transaction Privilege and Use Tax License for a corporation engaging or continuing in business shall provide, as a minimum, the names and addresses of both the chief executive officer and chief financial officer of the corporation. Licenses issued to persons engaging in business as corporations shall be in the name of the corporation.

(d) Multiple locations or multiple business names. A person engaging or continuing in one or more businesses at two (2) or more locations or under two (2) or more business names shall procure a license for each such location or business name. A "location" is a place of a separate business establishment.

(e) Real property rental, leasing, and licensing for use. In all cases the Transaction Privilege and Use Tax License shall be issued only to the owner of the real property regardless of the owner engaging a property manager or other broker to oversee the owner's business activity

including filing tax returns on behalf of the owner. Each rental property that can be independently sold or transferred is deemed to be a separate business establishment. Each platted parcel of real property subject to the tax imposed by this Chapter is deemed to be a separate business establishment and requires a separate license, regardless of the number of rental units located on that platted parcel. If one structure is located on multiple parcels in a manner such that ownership of an individual parcel cannot be sold or transferred without requiring alteration to divide the structure, one license shall be required for all affected parcels.
(Ord. No. 87.17, § 1, 4-23-87; Ord. No. 88.32, § 1(4), 4-28-88; Ord. No. 89.54, 10-12-89; Ord. No. 90.25, 7-12-90; Ord. No. 2007.20, 4-19-07; Ord. No. 2008.52, 10-2-08; Ord. No. O2014.73, 12-4-14)

Sec. 16-315. Repealed.
(Ord. No. 88.32, § 1(5), 4-28-88; Ord. No. 2008.52, 10-2-08; Ord. No. O2014.73, 12-4-14)

Sec. 16-320. License fees; annual renewal; renewal fees.

(a) The Transaction Privilege and Use Tax License shall be valid upon receipt of a non-refundable license fee of fifty dollars ($50.00), except for a license to engage in the business activity of residential or commercial real property rental, leasing, and licensing for use as separately identified in this section. The Transaction Privilege and Use Tax License shall be valid only for the calendar year in which it is issued unless renewed each year by filing the appropriate application for license renewal and paying an annual license renewal fee of fifty dollars ($50.00) for each license, subject to the limitations in A.R.S. 42-5005. Such annual renewal fee shall be due and payable on January 1 of each year and shall be considered delinquent if not paid and received on or before the last business day of January.

(b) The Transaction Privilege and Use Tax License to engage in the business activity of residential real property rental, leasing, and licensing for use shall be valid only upon receipt of a non-refundable license fee of fifty dollars ($50.00). The Transaction Privilege and Use Tax License shall be valid only for the calendar year in which it is issued unless renewed each year by filing the appropriate application for license renewal and paying an annual license renewal fee of fifty dollars ($50.00) for each license, subject to the limitations in A.R.S. 42-5005. Such fee shall be due and payable on January 1 of each year and shall be considered delinquent if not paid and received on or before the last business day of January.

(c) The Transaction Privilege and Use Tax License to engage in the business activity of commercial real property rental, leasing, and licensing for use shall be valid only upon receipt of a non-refundable license fee of fifty dollars ($50.00). The Transaction Privilege and Use Tax License shall be valid only for the calendar year in which it is issued unless renewed each year by filing the appropriate application for license renewal and paying an annual license renewal fee of fifty dollars ($50.00) for each license, subject to the limitations in A.R.S. 42-5005. Such fee shall be due and payable on January 1 of each year and shall be considered delinquent if not paid and received on or before the last business day of January.
(Ord. No. 87.17, § 1, 4-23-87; Ord. No. O2014.73, 12-4-14)

Sec. 16-330. Licensing: duration; transferability; display; penalties; penalty waiver; relicensing; fees collectible as if taxes.

(a) The Transaction Privilege and Use Tax License shall be valid only for the calendar year in which it is issued unless renewed each year by filing the appropriate application for license renewal and paying the applicable license renewal fee for each license, subject to the limitations in A.R.S. 42-5005. Such fee shall be due and payable on January 1 of each year and shall be considered delinquent if not paid and received on or before the last business day of January. Application and payment of the annual fee must be received in the Tax Collector's office to be deemed paid and received.

(b) The Transaction Privilege and Use Tax License shall be nontransferable between owners or locations, and shall be on display to the public in the licensee's place of business.

(c) Any person required to be licensed under this Chapter who fails to obtain a license on or before conducting any business activity requiring such license shall be subject to the license fees due for each year in business plus a penalty in the amount of fifty percent (50%) of the applicable fee for each period of time for which such fee would have been imposed, from and after the date on which such activity commenced until paid. This penalty shall be in addition to any other penalty imposed under this Chapter and must be paid prior to the issuance of any license. License fee penalties may be waived by the Tax Collector subject to the same terms as the waiver of tax penalties as provided for in Section 16-540.

(d) Any licensee who fails to renew his license on or before the due date shall be deemed to be operating without a license following such due date, and shall be subject to all penalties imposed under this Chapter against persons required to be licensed and operating without a license. The non-licensed status may be removed by payment of the annual license fee for each year or portion of a year he operated without a license, plus a license fee penalty of 50% of the license fee due for each year. License fee penalties may be waived by the Tax Collector subject to the same terms as the waiver of tax penalties as provided for in Section 16-540.

(e) Any licensee who permits his license to expire through cancellation as provided in Section 16-340, by his request for cancellation, by surrender of the license, or by the cessation of the business activity for which the license was issued, and who thereafter applies for a license, shall be granted a new license as a new applicant and shall pay the current license fee imposed under Section 16-320.

(f) Any licensee who needs a copy of his Transaction Privilege and Use Tax License which is still in effect shall be charged the current license fee for each reissuance of a license.

(g) Any person conducting a business activity subject to licensing without obtaining a Transaction Privilege and Use Tax License shall be liable to the City for all applicable fees and penalties and shall be subject to the provisions of Sections 16-580 and 16-590, to the same extent as if such fees and penalties were taxes and penalties under such Sections.
(Ord. No. 87.17, § 1, 4-23-87; Ord. No. O2014.73, 12-4-14)

Sec. 16-340. Licensing: cancellation; revocation.

(a) Cancellation. The Tax Collector may cancel the Transaction Privilege and Use Tax License of any licensee as "inactive" if the taxpayer, required to report monthly, has neither filed any return nor remitted any taxes imposed by this Chapter for a period of six (6) consecutive months; or, if required to report quarterly, has neither filed any return nor remitted any taxes imposed by this Chapter for two (2) consecutive quarters; or, if required to report annually, has neither filed any return nor remitted any taxes imposed by this Chapter when such annual report and tax are due to be filed with and remitted to the Tax Collector.

(b) Revocation. If any licensee fails to pay any tax, interest, penalty, fee, or sum required to be paid under this Chapter, or if such licensee fails to comply with any other provisions of this Chapter, the Tax Collector may revoke the Transaction Privilege and Use Tax License of said licensee.

(c) Notice and hearing. The Tax Collector shall deliver notice to such licensee of cancellation or revocation of the Transaction Privilege and Use Tax License. If the licensee requests a hearing within twenty (20) days of receipt of such notice, he shall be granted a hearing before the Tax Collector.

(d) After cancellation or revocation of a taxpayer's license, the taxpayer shall not be issued a new license until all reports have been filed; all fees, taxes, interest, and penalties due have been paid; and he is in compliance with all provisions of this Chapter.
(Ord. No. O2014.73, 12-4-14)

Sec. 16-350. Operating without a license.

It shall be unlawful for any person who is required by this Chapter to obtain a Transaction Privilege and Use Tax License to engage in or continue in business without a license. The Tax Collector shall assess any delinquencies in tax, interest, and penalties which may apply against such person upon any transactions subject to the taxes imposed by this Chapter.
(Ord. No. 87.17, § 1, 4-23-87; Ord. No. 96.43, 12-12-96; Ord. No. O2014.73, 12-4-14)

Sec. 16-360. Recordkeeping requirements.

(a) It shall be the duty of every person subject to the tax imposed by this Chapter to keep and preserve suitable records and such other books and accounts as may be necessary to determine the amount of tax for which he is liable under this Chapter. The books and records must contain, at a minimum, such detail and summary information as may be required by this Article; or when records are maintained within an Electronic Data Processing (EDP) system, the requirements established by the Arizona Department of Revenue for privilege tax filings will be accepted. It shall be the duty of every person to keep and preserve such books and records for a period equal to the applicable limitation period for assessment of tax, and all such books and records shall be open for inspection by the Tax Collector during any business day.

(b) The Tax Collector may direct, by letter, a specific taxpayer to keep specific other books, records, and documents. Such letter directive shall apply:

(1) Only for future reporting periods, and

(2) Only by express determination of the Tax Collector that such specific recordkeeping is necessary due to the inability of the taxing jurisdiction to conduct an adequate examination of the past activities of the taxpayer, which inability resulted from inaccurate or inadequate books, records, or documentation maintained by the taxpayer.

(Ord. No. 87.17, § 1, 4-23-87; Ord. No. O2014.73, 12-4-14)

Sec. 16-362. Recordkeeping: income.

The minimum records required for persons having gross income subject to, or exempt or excluded from, tax by this Chapter must show:

(a) The gross income of the taxpayer attributable to any activity occurring in whole or in part in the City.

(b) The gross income taxable under this Chapter, divided into categories as stated in the official City tax return.

(c) The gross income subject to Arizona Transaction privilege taxes, divided into categories as stated in the official state tax return.

(d) The gross income claimed to be exempt, and with respect to each activity or transaction so claimed:

(1) If the transaction is claimed to be exempt as a sale for resale or as a sale, rental, lease, or license for use of rental equipment:

(A) The City privilege license number and state transaction privilege tax license number of the customer (or the equivalent city, if applicable, and state tax numbers of the city and state where the customer resides), and

(B) The name, business address, and business activity of the customer, and

(C) Evidence sufficient to persuade a reasonably prudent businessman that the transaction is believed to be in good faith a purchase for resale, or a purchase, rental, lease, or license for use of rental equipment, by the vendee in the ordinary and regular course of his business activity, as provided by regulation.

(2) If the transaction is claimed to be exempt for any other reason:

(A) The name, business address, and business activity of the customer, and

(B) Evidence which would establish the applicability of the exemption to a reasonably prudent businessman acting in good faith. Ordinary business documentation which would reasonably indicate the applicability of an exemption shall be sufficient to relieve the person on whom the tax would

otherwise be imposed from liability therein, if he acts in good faith as provided by regulation.

(e) With respect to those allowed deductions or exclusions for tax collected or charges for delivery or other direct customer services, where applicable, evidence that the deductible income has been separately stated and shown on the records of the taxpayer and on invoices or receipts provided to the customer. All other deductions, exemptions, and exclusions shall be separately shown and substantiated.

(f) With respect to special classes and activities, such other books, records, and documentation as the Tax Collector, by regulation, shall deem necessary for specific classes of taxpayer by reason of the specialized business activity of any such class.

(g) In all cases, the books and records of the taxpayer shall indicate both individual transaction amounts and totals for each reporting period for each category of taxable, exempt, and excluded income defined by this Chapter.
(Ord. No. O2014.73, 12-4-14)

Sec. 16-364. Recordkeeping: expenditures.

The minimum records required for persons having expenditures, costs, purchases and rental or lease or license expenses subject to, or exempt or excluded from, tax by this Chapter are:

(a) The total price of all goods acquired for use or storage in the City.

(b) The date of acquisition and the name and business address of the seller or lessor of all goods acquired for use or storage in the City.

(c) Documentation of taxes, freight, and direct customer service labor separately charged and paid for each purchase, rental, lease, or license.

(d) The gross price of each acquisition claimed as exempt from tax, and with respect to each transaction so claimed, sufficient evidence to satisfy the Tax Collector that the exemption claimed is applicable.

(e) As applicable to each taxpayer, documentation sufficient to the Tax Collector, so that he may ascertain:

(1) All construction expenditures and all privilege and use taxes claimed paid, relating to owner-builders and speculative builders.

(2) Disbursement of collected gratuities and related payroll information required of restaurants.

(3) Reserved.

(A) Reserved.

(B) Reserved.

(4) The validity of any claims of proof of exemption.

(5) A claimed alternative prior value for reconstruction.

(6) All claimed exemptions to the Use Tax imposed by Article VI of this Chapter.

(7) Costs used to compute the "computed charge" claimed for retail service and repair.

(8) Reserved.

(9) Reserved.

(f) Any additional documentation as the Tax Collector, by regulation, shall deem necessary for any specific class of taxpayer by reason of the specialized business activity of specific exemptions afforded to that class of taxpayer.

(g) In all cases, the books and records of the taxpayer shall indicate both individual transaction amounts and totals for each reporting period for each category of taxable, exempt, and excluded expenditures as defined by this Chapter.
(Ord. No. O2014.73, 12-4-14)

Sec. 16-366. Recordkeeping: out-of-city and out-of-state sales.

(a) Out-of-city sales. Any person engaging or continuing in a business who claims out-of-city sales shall maintain and keep accounting records or books indicating separately the gross income from the sales of tangible personal property from such out-of-city branches or locations.

(b) Out-of-state sales. Persons engaged in a business claiming out-of-state sales shall maintain accounting records or books indicating for each out-of-state sale the following documentation:

(1) Documentation of location of the buyer at the time of order placement; and

(2) Shipping, delivery, or freight documents showing where the buyer took delivery; and

(3) Documentation of intended location of use or storage of the tangible personal property sold to such buyer.
(Ord. No. O2014.73, 12-4-14)

Sec. 16-370. Recordkeeping: claim of exclusion, exemption, deduction, or credit; documentation; liability.

(a) All deductions, exclusions, exemptions, and credits provided in this Chapter are conditional upon adequate proof and documentation of such as may be required either by this Chapter or regulation.

(b) Any person who claims and receives an exemption, deduction, exclusion, or credit to which he is not entitled under this Chapter, shall be subject to, liable for, and pay the tax on the transaction as if the vendor subject to the tax had passed the burden of the payment of the tax to the person wrongfully claiming the exemption. A person who wrongfully claimed such exemption shall be treated as if he is delinquent in the payment of the tax and shall be subject to interest and penalties upon such delinquency. However, if the tax is collected from the vendor on such transaction it shall not again be collected from the person claiming the exemption, or if collected from the person claiming the exemption it shall not also be collected from the vendor.

(Ord. No. 87.17, § 1, 4-23-87; Ord. No. O2014.73, 12-4-14)

Sec. 16-372. Proof of exemption: sale for resale; sale, rental, lease, or license of rental equipment.

A claim of purchase for resale or of purchase, rental, lease, or license for rent, lease, or license is valid only if the evidence is sufficient to persuade a reasonably prudent businessman that the particular item is being acquired for resale or for rental, lease, or license in the ordinary course of business. The fact that the acquiring person possesses a privilege license number, and makes a verbal claim of "sale for resale or lease" or "lease for re-lease" does not meet this burden and is insufficient to justify an exemption. The "reasonable evidence" must be evidence which exists objectively, and not merely in the mind of the vendor, that the property being acquired is normally sold, rented, leased, or licensed by the acquiring person in the ordinary course of business. Failure to obtain such reasonable evidence at the time of the transaction will be a basis for disallowance of any claimed deduction on returns filed for such transactions.

(Ord. No. O2014.73, 12-4-14)

Sec. 16-380. Inadequate or unsuitable records.

In the event the records provided by the taxpayer are considered by the Tax Collector to be inadequate or unsuitable to determine the amount of the tax for which such taxpayer is liable under the provisions of this Chapter, it is the responsibility of the taxpayer either:

(a) To provide such other records required by this Chapter or regulation; or

(b) To correct or to reconstruct his records, to the satisfaction of the Tax Collector.

(Ord. No. O2014.73, 12-4-14)

ARTICLE IV. PRIVILEGE TAXES

Sec. 16-400. Imposition of privilege taxes; presumption.

(a) There are hereby levied and imposed, subject to all other provisions of this Chapter, the following Privilege Taxes for the purpose of raising revenue to be used in defraying the necessary expenses of the City, such taxes to be collected by the Tax Collector:

(1) A Privilege Tax upon persons on account of their business activities, to the extent provided elsewhere in this Article, to be measured by the gross income of persons, whether derived from residents of the City or not, or whether derived from within the City or from without.

(2) Reserved.

(b) *Taxes imposed by this Chapter are in addition to others.* Except as specifically designated elsewhere in this Chapter, each of the taxes imposed by this Chapter shall be in addition to all other licenses, fees, and taxes levied by law, including other taxes imposed by this Chapter.

(c) *Presumption.* For the purpose of proper administration of this Chapter and to prevent evasion of the taxes imposed by this Chapter, it shall be presumed that all gross income is subject to the tax until the contrary is established by the taxpayer.

(d) *Limitation of exemptions, deductions, and credits allowed against the measure of taxes imposed by this Chapter.* All exemptions, deductions, and credits set forth in this Chapter shall be limited to the specific activity or transaction described and not extended to include any other activity or transaction subject to the tax.
(Ord. No. 87.17, § 1, 4-23-87)

Editor's note—(a) Voters granted authority to city council on September 14, 1993, to increase the privilege and use tax from 1% to 1.2%. Ord. No. 93.37, adopted 10-14-93, increased the privilege and use tax from 1% to 1.2%, effective December 1, 1993, per the terms of the Ordinance on file with the city clerk.

(b) Voters granted authority to city council on September 10, 1996, to increase the privilege and use tax from 1.2% to 1.7%. Ord. No. 96.41, adopted 10-24-96, increased the privilege and use tax from 1.2% to 1.7%, effective January 1, 1997, per the terms of the Ordinance on file with the city clerk.

(c) Voters granted authority to city council on May 16, 2000, to increase the privilege and use tax from 1.7% to 1.8%. Ord. No. 2000.37, adopted 9-14-00, increased the privilege and use tax from 1.7% to 1.8%, effective January 1, 2001, per the terms of the Ordinance on file with the city clerk.

(d) Voters granted authority to city council on May 18, 2010, to increase the privilege and use tax from 1.8% to 2%. Ord. No. 2010.20, adopted 6-24-10, increased the privilege and use tax from 1.8% to 2%, effective July 1, 2010, per the terms of the Ordinance on file with the city clerk.

(e) Ordinance No. O2014.21 repealed the temporary privilege and use tax approved by the voters on May 18, 2010, decreasing the privilege and use tax from 2% to 1.8%, effective after June 30, 2014, per the terms of the Ordinance on file with the city clerk.

Sec. 16-405. Advertising.

(a) The tax rate shall be at an amount equal to one and eight-tenths percent (1.8%) of the gross income from the business activity upon every person engaging or continuing in the business of "local advertising" by billboards, direct mail, radio, television, or by any other means. However, commission and fees retained by an advertising agency shall not be includable in gross income from "local advertising". All delivery or disseminating of information directly to

the public or any portion thereof for a consideration shall be considered "local advertising", except the following:

(1) The advertising of a product or service which is sold or provided both within and without the State by more than one "commonly designated business entity" within State, and in which the advertisement names either no "commonly designated business entity" within the State or more than one "commonly designated business entity". "Commonly designated business entity" means any person selling or providing any product or service to its customers under a common business name or style, even though there may be more than one legal entity conducting business functions using the same or substantially the same business name or style by virtue of a franchise, license, or similar agreement.

(2) The advertising of a facility or of a service or activity in which neither the facility nor a business site carrying on such service or activity is located within the State.

(3) The advertising of a product which may only be purchased from an out-of-state supplier.

(4) Political advertising for United States Presidential and Vice-Presidential candidates only.

(5) Advertising by means of product purchase coupons redeemable at any retail establishment carrying such product but not product coupons redeemable only at a single commonly designated business entity.

(6) Advertising transportation services where a substantial portion of the transportation activity of the business entity advertised involves interstate or foreign carriage.

(b) Reserved.

(Ord. No. 87.17, § 1, 4-23-87; Ord. No. 93.37, 10-14-93; Ord. No. 96.41, 10-24-96; Ord. No. 2000.37, 9-14-00; Ord. No. 2010.33, 9-16-10; Ord. No. O2014.21, 5-22-14)

Sec. 16-407. Reserved.

(Ord. No. 88.32, § 1(6), 4-28-88)

Sec. 16-410. Amusements, exhibitions, and similar activities.

(a) The tax rate shall be at an amount equal to one and eight-tenths percent (1.8%) of the gross income from the business activity upon every person engaging or continuing in the business of providing amusement that begins in the city or takes place entirely within the city, which includes the following type or nature of businesses:

(1) Operating or conducting theaters, movies, operas, shows of any type or nature, exhibitions, concerts, carnivals, circuses, amusement parks, menageries, fairs, races, contests, games, billiard or pool parlors, bowling alleys, skating rinks, tennis courts, golf courses, video games, pinball machines, public dances, dance halls, sports events, jukeboxes, batting and driving ranges, animal rides, or any other business charging admission for exhibition, amusement, or entertainment.

(2) Reserved.

(3) Health spas and fitness centers, which charge for the use of their premises, whether on a per-event use or for long-term usage, such as membership fees.

(b) *Deductions or exemptions.* The gross proceeds of sales or gross income derived from the following sources is exempt from the tax imposed by this Section:

(1) Reserved.

(2) Amounts retained by the Arizona Exposition and State Fair Board from ride ticket sales at the annual Arizona State Fair.

(3) Income received from a hotel business subject to tax under Section 16-444, if all of the following apply:

(A) The hotel business receives gross income from a customer for the specific business activity otherwise subject to amusement tax.

(B) The consideration received by the hotel business is equal to or greater than the amount to be deducted under this subsection.

(C) The hotel business has provided an exemption certificate to the person engaging in business under this Section.

(4) Income that is specifically included as the gross income of a business activity upon which another Section of this article imposes a tax, that is separately stated to the customer and is taxable to the person engaged in that classification not to exceed consideration paid to the person conducting the activity.

(5) Income from arranging transportation connected to amusement activity that is separately stated to the customer, not to exceed consideration paid to the transportation business.

(c) The tax imposed by this Section shall not include arranging an amusement activity as a service to a person’s customers if that person is not otherwise engaged in the business of operating or conducting an amusement themselves or through others. This exception does not apply to businesses that operate or conduct amusements pursuant to customer orders and send the billings and receive the payments associated with that activity, including when the amusement is performed by third party independent contractors. For the purposes of this paragraph "arranging" includes billing for or collecting amusement charges from a person’s customers on behalf of the persons providing the amusement.
(Ord. No. 87.17, § 1, 4-23-87; Ord. No. 93.37, 10-14-93; Ord. 95.03, 1-12-95; Ord No. 95.50, 1-11-96; Ord. No. 96.41, 10-24-96; Ord. No. 98.13, 3-12-98; Ord. No. 2000.37, 9-14-00; Ord. No. 2007.20, 4-19-07; Ord. No. 2010.20, 6-24-10; Ord. No. O2014.21, 5-22-14)

Sec. 16-415. Construction contracting—Construction contractors.

(a) The tax rate shall be at an amount equal to one and eight-tenths percent (1.8%) of the gross income from the business upon every construction contractor engaging or continuing in the business activity of construction contracting within the City.

(1) However, gross income from construction contracting shall not include charges related to groundwater measuring devices required by A.R.S. Section 45-604.

(2) Reserved.

(3) Gross income from construction contracting shall not include gross income from the sale of manufactured buildings taxable under Section 16-427.

(4) For taxable periods beginning from and after July 1, 2008, the portion of gross proceeds of sales or gross income attributable to the actual direct costs of providing architectural or engineering services that are incorporated in a contract is not subject to tax under this Section. For the purposes of this subsection, "direct costs" means the portion of the actual costs that are directly expended in providing architectural or engineering services.

(b) *Deductions and exemptions:*

(1) Gross income derived from acting as a "subcontractor" shall be exempt from the tax imposed by this Section.

(2) All construction contracting gross income subject to the tax and not deductible herein shall be allowed a deduction of thirty-five percent (35%).

(3) The gross proceeds of sales or gross income attributable to the purchase of machinery, equipment or other tangible personal property that is exempt from or deductible from privilege or use tax under:

(A) Section 16-465; subsections (g) and (p)

(B) Section 16-660, subsections (g) and (p)

shall be exempt or deductible, respectively, from the tax imposed by this Section.

(4) The gross proceeds of sales or gross income that is derived from a contract entered into for the installation, assembly, repair or maintenance of income-producing capital equipment, as defined in Section 16-110, that is deducted from the retail classification pursuant to Section 16-465(g), that does not become a permanent attachment to a building, highway, road, railroad, excavation or manufactured building or other structure, project, development or improvement shall be exempt from the tax imposed by this Section. If the ownership of the realty is separate from the ownership of the income-producing capital equipment, the determination as to permanent attachment shall be made

as if the ownership was the same. The deduction provided in this paragraph does not include gross proceeds of sales or gross income from that portion of any contracting activity which consists of the development of, or modification to, real property in order to facilitate the installation, assembly, repair, maintenance or removal of the income-producing capital equipment. For purposes of this paragraph, "permanent attachment" means at least one of the following:

(A) To be incorporated into real property.

(B) To become so affixed to real property that it becomes part of the real property.

(C) To be so attached to real property that removal would cause substantial damage to the real property from which it is removed.

(5) The gross proceeds of sales or gross income received from a contract for the construction of an environmentally controlled facility for the raising of poultry for the production of eggs and the sorting, or cooling and packaging of eggs shall be exempt from the tax imposed under this Section.

(6) The gross proceeds of sales or gross income that is derived from the installation, assembly, repair or maintenance of clean rooms that are deducted from the tax base of the retail classification pursuant to Section 16-465, subsection (g) shall be exempt from the tax imposed under this Section.

(7) The gross proceeds of sales or gross income that is derived from a contract entered into with a person who is engaged in the commercial production of livestock, livestock products or agricultural, horticultural, viticultural or floricultural crops or products in this State for the construction, alteration, repair, improvement, movement, wrecking or demolition or addition to or subtraction from any building, highway, road, excavation, manufactured building or other structure, project, development or improvement used directly and primarily to prevent, monitor, control or reduce air, water or land pollution shall be exempt from the tax imposed under this Section.

(8) The gross proceeds of sales or gross income received from a post construction contract to perform post-construction treatment of real property for termite and general pest control, including wood destroying organisms, shall be exempt from tax imposed under this Section.

(9) Through December 31, 2009, the gross proceeds of sales or gross income received from a contract for constructing any lake facility development in a commercial enhancement reuse district that is designated pursuant to A.R.S. Section 9-499.08 if the contractor maintains the following records in a form satisfactory to the Arizona Department of Revenue and to the city:

(A) The certificate of qualification of the lake facility development issued by the city pursuant to A.R.S. Section 9-499.08, Subsection D.

(B) All state and local transaction privilege tax returns for the period of time during which the contractor received gross proceeds of sales or gross income from a contract to construct a lake facility development in a designated commercial enhancement reuse district, showing the amount exempted from state and local taxation.

(C) Any other information considered to be necessary.

(10) Any amount attributable to development fees that are incurred in relation to the construction, development or improvement of real property and paid by the taxpayer as defined in the Model City Tax Code or by a contractor providing services to the taxpayer. For the purposes of this paragraph:

(A) The attributable amount shall not exceed the value of the development fees actually imposed.

(B) The attributable amount is equal to the total amount of development fees paid by the taxpayer or by a contractor providing services to the taxpayer and the total development fees credited in exchange for the construction of, contribution to or dedication of real property for providing public infrastructure, public safety or other public services necessary to the development. The real property must be the subject of the development fees.

(C) "Development fees" means fees imposed to offset capital costs of providing public infrastructure, public safety or other public services to a development and authorized pursuant to A.R.S. Section 9-463.05, A.R.S. Section 11-1102 or A.R.S. Title 48 regardless of the jurisdiction to which the fees are paid.

(11) For taxable periods beginning from and after July 1, 2008 and ending before January 1, 2017, the gross proceeds of sales or gross income derived from a contract to provide and install a solar energy device. The contractor shall register with the Department of Revenue as a solar energy contractor. By registering, the contractor acknowledges that it will make its books and records relating to sales of solar energy devices available to the Department of Revenue and the City, as applicable, for examination.

(c) *Subcontractor* means a construction contractor performing work for either:

(1) A construction contractor who has provided the subcontractor with a written declaration that he is liable for the tax for the project and has provided the subcontractor his City Privilege License number.

(2) An owner-builder who has provided the subcontractor with a written declaration that:

(A) The owner-builder is improving the property for sale; and

(B) The owner-builder is liable for the tax for such construction contracting activity; and

(C) The owner-builder has provided the contractor his City Privilege License number.

(3) A person selling new manufactured buildings who has provided the subcontractor with a written declaration that he is liable for the tax for the site preparation and set-up; and provided the subcontractor his City Privilege License number.

Subcontractor also includes a construction contractor performing work for another subcontractor as defined above.

(Ord. No. 87.17, § 1, 4-23-87; Ord. No. 90.25, 7-12-90; Ord. No. 93.37, 10-14-93; Ord. No. 95.03, 1-12-95; Ord. No. 96.41, 10-24-96; Ord. No. 99.40, 12-16-99; Ord. No. 2000.37, 9-14-00; Ord. No. 2007.20, 4-19-07; Ord. No. 2008.26, 8-14-08; Ord. No. 2010.09, 5-6-10; Ord. No. 2011.31, 9-8-11)

Sec. 16-416. Construction contracting—Speculative builders.

(a) The tax shall be equal to one and eight-tenths percent (1.8%) of the gross income from the business activity upon every person engaging or continuing in business as a speculative builder within the City.

(1) The gross income of a speculative builder considered taxable shall include the total selling price from the sale of improved real property at the time of closing of escrow or transfer of title.

(2) "Improved real property" means any real property:

(A) Upon which a structure has been constructed; or

(B) Where improvements have been made to land containing no structure (such as paving or landscaping); or

(C) Which has been reconstructed as provided by Regulation; or

(D) Where water, power, and streets have been constructed to the property line.

(3) "Sale of improved real property" includes any form of transaction, whether characterized as a lease or otherwise, which in substance is a transfer of title of, or equitable ownership in, improved real property and includes any lease of the property for a term of thirty (30) years or more (with all options for renewal being included as a part of the term). In the case of multiple unit projects, "sale" refers to the sale of the entire project or to the sale of any individual parcel or unit.

(4) "Partially improved residential real property", as used in this Section, means any improved real property, as defined in subsection (a)(2) above, being developed for sale to individual homeowners, where the construction of the residence upon such property is not substantially complete at the time of the sale.

(b) *Exclusions:*

(1) In cases involving reconstruction contracting, the speculative builder may exclude from gross income the prior value allowed for reconstruction contracting in determining his taxable gross income, as provided by Regulation.

(2) Neither the cost nor the fair market value of the land which constitutes part of the improved real property sold may be excluded or deducted from gross income subject to the tax imposed by this Section.

(3) Reserved.

(4) A speculative builder may exclude gross income from the sale of partially improved residential real property as defined in subsection (a)(4) above to another speculative builder only if all of the following conditions are satisfied:

(A) The speculative builder purchasing the partially improved residential real property has a valid City Privilege License for construction contracting as a speculative builder; and

(B) At the time of the transaction, the purchaser provides the seller with a properly completed written declaration that the purchaser assumes liability for and will pay all privilege taxes which would otherwise be due the City at the time of sale of the partially improved residential real property; and

(C) The seller also:

(i) Maintains proper records of such transactions in a manner similar to the requirements provided in this Chapter relating to sales for resale; and

(ii) Retains a copy of the written declaration provided by the buyer for the transaction; and

(iii) Is properly licensed with the City as a speculative builder and provides the City with the written declaration attached to the City privilege tax return where he claims the exclusion.

(5) For taxable periods beginning from and after July 1, 2008, the portion of gross proceeds of sales or gross income attributable to the actual direct costs of providing architectural or engineering services that are incorporated in a contract is not subject to tax under this Section. For purposes of this subsection, "direct costs" means the portion of the actual costs that are directly expended in providing architectural or engineering services.

(c) Tax liability for speculative builders occurs at close of escrow or transfer of title, whichever occurs earlier, and is subject to the following provisions relating to exemptions, deductions and tax credits:

(1) *Exemptions.*

(A) The gross proceeds of sales or gross income attributable to the purchase of machinery, equipment or other tangible personal property that is exempt from or deductible from Privilege or Use Tax under:

(i) Section 16-465, subsections (g) and (p)

(ii) Section 16-660, subsections (g) and (p)

shall be exempt or deductible, respectively, from the tax imposed by this Section.

(B) The gross proceeds of sales or gross income received from a contract for the construction of an environmentally controlled facility for the raising of poultry for the production of eggs and the sorting, or cooling and packaging of eggs shall be exempt from the tax imposed under this Section.

(C) The gross proceeds of sales or gross income that is derived from the installation, assembly, repair or maintenance of clean rooms that are deducted from the tax base of the retail classification pursuant to Section 16-465, subsection (g) shall be exempt from the tax imposed under this Section.

(D) The gross proceeds of sales or gross income that is derived from a contract entered into with a person who is engaged in the commercial production of livestock, livestock products or agricultural, horticultural, viticultural or floricultural crops or products in this State for the construction, alteration, repair, improvement, movement, wrecking or demolition or addition to or subtraction from any building, highway, road, excavation, manufactured building or other structure, project, development or improvement used directly and primarily to prevent, monitor, control or reduce air, water or land pollution shall be exempt from the tax imposed under this Section.

(E) Any amount attributable to development fees that are incurred in relation to the construction, development or improvement of real property and paid by the taxpayer as defined in the Model City Tax Code or by a contractor providing services to the taxpayer shall be exempt from the tax imposed under this Section. For the purposes of this paragraph:

(i) The attributable amount shall not exceed the value of the development fees actually imposed.

(ii) The attributable amount is equal to the total amount of development fees paid by the taxpayer or by a contractor providing services to the taxpayer and the total development fees credited in exchange for the construction of, contribution to or dedication of real property for providing public infrastructure, public safety or other public services necessary to the development. The real property must be the subject of the development fees.

(iii) "Development fees" means fees imposed to offset capital costs of providing public infrastructure, public safety or other public services to a development and authorized pursuant to A.R.S. Section 9-463.05, A.R.S. Section 11-1102 or A.R.S. Title 48 regardless of the jurisdiction to which the fees are paid.

(2) *Deductions.*

(A) All amounts subject to the tax shall be allowed a deduction in the amount of thirty-five percent (35%).

(B) The gross proceeds of sales or gross income that is derived from a contract entered into for the installation, assembly, repair or maintenance of income-producing capital equipment, as defined in Section 16-110, that is deducted from the retail classification pursuant to Section 16-465(g), that does not become a permanent attachment to a building, highway, road, railroad, excavation or manufactured building or other structure, project, development or improvement shall be exempt from the tax imposed by this Section. If the ownership of the realty is separate from the ownership of the income-producing capital equipment, the determination as to permanent attachment shall be made as if the ownership was the same. The deduction provided in this paragraph does not include gross proceeds of sales or gross income from that portion of any contracting activity which consists of the development of, or modification to, real property in order to facilitate the installation, assembly, repair, maintenance or removal of the income-producing capital equipment. For purposes of this paragraph, "permanent attachment" means at least one of the following:

(i) To be incorporated into real property.

(ii) To become so affixed to real property that it becomes part of the real property.

(iii) To be so attached to real property that removal would cause substantial damage to the real property from which it is removed.

(C) For taxable periods beginning from and after July 1, 2008 and ending before January 1, 2017, the gross proceeds of sales or gross income derived from a contract to provide and install a solar energy device. The contractor shall register with the Department of Revenue as a solar energy

contractor. By registering, the contractor acknowledges that it will make its books and records relating to sales of solar energy devices available to the Department of Revenue and the City, as applicable, for examination.

(3) *Tax Credits.*

The following tax credits are available to owner-builders or speculative builders, not to exceed the tax liability against which such credits apply, provided such credits are documented to the satisfaction of the Tax Collector.

(A) A tax credit equal to the amount of City Privilege or Use Tax, or the equivalent excise tax, paid directly to a taxing jurisdiction or as a separately itemized charge paid directly to the vendor with respect to the tangible personal property incorporated into the said structure or improvement to real property undertaken by the owner-builder or speculative builder.

(B) A tax credit equal to the amount of Privilege Taxes paid to this City, or charge separately to the speculative builder, by a construction contractor, on the gross income derived by said person from the construction of any improvement to the real property.

(C) No credits provided herein may be claimed until such time that the gross income against which said credits apply is reported.

(Ord. No. 87.17, § 1, 4-23-87; Ord. No. 88.32, § 1(7), 4-28-88; Ord. No. 90.25, 7-12-90; Ord. No. 93.37, 10-14-93; Ord. No. 96.41, 10-24-96; Ord. No. 99.40, 12-16-99; Ord. No. 2000.37, 9-14-00; Ord. No. 2007.20, 4-19-07; Ord. No. 2008.26, 8-14-08; Ord. No. 2010.09, 5-6-10; Ord. No. 2011.31, 9-8-11)

Sec. 16-417. Construction contracting—Owner-builders who are not speculative builders.

(a) At the expiration of twenty-four (24) months after improvement to the property is substantially complete, the tax liability for an owner-builder who is not a speculative builder shall be at an amount equal to one and eight-tenths percent (1.8%) of:

(1) The gross income from the activity of construction contracting upon the real property in question which was realized by those construction contractors to whom the owner-builder provided written declaration that they were not responsible for the taxes as prescribed in subsection 16-415(c)(2); and

(2) The purchase of tangible personal property for incorporation into any improvement to real property, computed on the sales price.

(b) For taxable periods beginning from and after July 1, 2008, the portion of gross proceeds of sales or gross income attributable to the actual direct costs of providing architectural or engineering services that are incorporated in a contract is not subject to tax under this Section. For purposes of this subsection, "direct costs" means the portion of the actual costs that are directly expended in providing architectural or engineering services.

(c) The tax liability of this Section is subject to the following provisions relating to exemptions, deductions and tax credits:

(1) *Exemptions.*

(A) The gross proceeds of sales or gross income attributable to the purchase of machinery, equipment or other tangible personal property that is exempt from or deductible from Privilege or Use Tax under:

(i) Section 16-465, subsections (g) and (p)

(ii) Section 16-660, subsections (g) and (p)

shall be exempt or deductible, respectively, from the tax imposed by this Section.

(B) The gross proceeds of sales or gross income received from a contract for the construction of an environmentally controlled facility for the raising of poultry for the production of eggs and the sorting, or cooling and packaging of eggs shall be exempt from the tax imposed under this Section.

(C) The gross proceeds of sales or gross income that is derived from the installation, assembly, repair or maintenance of clean rooms that are deducted from the tax base of the retail classification pursuant to Section 16-465, subsection (g) shall be exempt from the tax imposed under this Section.

(D) The gross proceeds of sales or gross income that is derived from a contract entered into with a person who is engaged in the commercial production of livestock, livestock products or agricultural, horticultural, viticultural or floricultural crops or products in this State for the construction, alteration, repair, improvement, movement, wrecking or demolition or addition to or subtraction from any building, highway, road, excavation, manufactured building or other structure, project, development or improvement used directly and primarily to prevent, monitor, control or reduce air, water or land pollution shall be exempt from the tax imposed under this Section.

(E) Any amount attributable to development fees that are incurred in relation to the construction, development or improvement of real property and paid by the taxpayer as defined in the Model City Tax Code or by a contractor providing services to the taxpayer shall be exempt from the tax imposed under this Section. For the purposes of this paragraph:

(i) The attributable amount shall not exceed the value of the development fees actually imposed.

(ii) The attributable amount is equal to the total amount of development fees paid by the taxpayer or by a contractor providing services to the taxpayer and the total development fees credited in exchange for the construction of, contribution to or dedication of real property for providing public infrastructure, public safety or other public services necessary to the development. The real property must be the subject of the development fees.

(iii) "Development fees" means fees imposed to offset capital costs of providing public infrastructure, public safety or other public services to a development and authorized pursuant to A.R.S. Section 9-463.05, A.R.S. Section 11-1102 or A.R.S. Title 48 regardless of the jurisdiction to which the fees are paid.

(2) *Deductions.*

(A) All amounts subject to the tax shall be allowed a deduction in the amount of thirty-five percent (35%).

(B) The gross proceeds of sales or gross income that is derived from a contract entered into for the installation, assembly, repair or maintenance of income-producing capital equipment, as defined in Section 16-110, that is deducted from the retail classification pursuant to Section 16-465(g), that does not become a permanent attachment to a building, highway, road, railroad, excavation or manufactured building or other structure, project, development or improvement shall be exempt from the tax imposed by this Section. If the ownership of the realty is separate from the ownership of the income-producing capital equipment, the determination as to permanent attachment shall be made as if the ownership was the same. The deduction provided in this paragraph does not include gross proceeds of sales or gross income from that portion of any contracting activity which consists of the development of, or modification to, real property in order to facilitate the installation, assembly, repair, maintenance or removal of the income-producing capital equipment. For purposes of this paragraph, "permanent attachment" means at least one of the following:

(i) To be incorporated into real property.

(ii) To become so affixed to real property that it becomes part of the real property.

(iii) To be so attached to real property that removal would cause substantial damage to the real property from which it is removed.

(C) For taxable periods beginning from and after July 1, 2008 and ending before January 1, 2017, the gross proceeds of sales or gross income derived from a contract to provide and install a solar energy device. The contractor shall register with the Department of Revenue as a solar energy

contractor. By registering, the contractor acknowledges that it will make its books and records relating to sales of solar energy devices available to the Department of Revenue and the City, as applicable, for examination.

(3) *Tax Credits.*

The following tax credits are available to owner-builders and speculative builders, not to exceed the tax liability against which such credits apply, provided such credits are documented to the satisfaction of the Tax Collector.

(A) A tax credit equal to the amount of City Privilege or Use Tax, or the equivalent excise tax, paid directly to a taxing jurisdiction or as a separately itemized charge paid directly to the vendor with respect to the tangible personal property incorporated into the said structure or improvement to real property undertaken by the owner-builder or speculative builder.

(B) A tax credit equal to the amount of Privilege Taxes paid to this City, or charge separately to the speculative builder, by a construction contractor, on the gross income derived by said person from the construction of any improvement to the real property.

(C) No credits provided herein may be claimed until such time that the gross income against which said credits apply is reported.

(d) The limitation period for the assessment of taxes imposed by this Section is measured based upon when such liability is reportable, that is, in the reporting period that encompasses the twenty-fifth (25th) month after said unit or project was substantially complete. Interest and penalties, as provided in Section 16-540, will be based on reportable date.

(e) Reserved.

(Ord. No. 87.17, § 1, 4-23-87; Ord. No. 93.37, 10-14-93; Ord. No. 96.41, 10-24-96; Ord. No. 99.40, 12-16-99; Ord. No. 2000.37, 9-14-00; Ord. No. 2007.20, 4-19-07; Ord. No. 2008.26, 8-14-08; Ord. No. 2010.09, 5-6-10; Ord. No. 2011.31, 9-8-11)

Sec. 16-418. Reserved.

(Ord. No. 87.17, § 1, 4-23-87; Ord. No. 99.40, 12-16-99)

Sec. 16-420. Reserved.

(Ord. No. 87.17, § 1, 4-23-87)

Sec. 16-425. Job printing.

(a) The tax rate shall be at an amount equal to one and eight-tenths percent (1.8%) of the gross income from the business activity upon every person engaging or continuing in the business of job printing, which includes engraving of printing plates, embossing, copying, micrographics, and photo reproduction.

(b) The tax imposed by this Section shall not apply to:

(1) Job printing purchased for the purpose of resale by the purchaser in the form supplied by the job printer.

(2) Out-of-city sales.

(3) Out-of-state sales.

(4) Job printing of newspapers, magazines, or other periodicals or publications for a person who is subject to the tax imposed by subsection 16-435(a) or an equivalent excise tax; provided further that said person is properly licensed by the taxing jurisdiction at the location of publication.

(5) Sales of job printing to a qualifying hospital, qualifying community health center or a qualifying health care organization, except when the property sold is for use in activities resulting in gross income from unrelated business income as that term is defined in 26 U.S.C. Section 512.

(6) Reserved.

(7) Sales of postage and freight except that the amount deducted shall not exceed the actual postage and freight expense that is paid to the United States Postal Service or a commercial delivery service and that is separately itemized by the taxpayer on the customer's invoice and in the taxpayer's records.

(Ord. No. 87.17, § 1, 4-23-87; Ord. No. 88.32, § 1(8), 4-28-88; Ord. No. 93.37, 10-14-93; Ord. No. 95.03, 1-12-95; Ord. No. 96.41, 10-24-96; Ord. No. 98.37, 06-25-98; Ord. No. 2000.37, 9-14-00; Ord. No. 2010.20, 6-24-10; Ord. No. O2014.01, 1-9-14; Ord. No. O2014.21, 5-22-14)

Sec. 16-427. Manufactured buildings.

(a) The tax rate shall be at an amount equal to one and eight-tenths percent (1.8%) of the gross income, including site preparation, moving to the site, and/or set-up, upon every person engaging or continuing in the business activity of selling manufactured buildings within the City. Such business activity is deemed to occur at the business location of the seller where the purchaser first entered into the contract to purchase the manufactured building.

(b) Sales of used manufactured buildings are not taxable.

(c) The sale prices of furniture, furnishings, fixtures, appliances, and attachments that are not incorporated as component parts of or attached to a manufactured building are exempt from the tax imposed by this Section. Sales of such items are subject to the tax under Section 16-460.

(d) Under this Section, a trade-in will not be allowed for the purpose of reducing the tax liability.

(Ord. No. 95.03, 1-12-95; Ord. No. 96.41, 10-24-96; Ord. No. 2000.37, 9-14-00; Ord. No. 2010.20, 6-24-10; Ord. No. O2014.21, 5-22-14)

Sec. 16-430. Timbering and other extraction.

(a) The tax rate shall be at an amount equal to one and eight-tenths percent (1.8%) of the gross income from the business activity upon every person engaging or continuing in the following businesses:

(1) Felling, producing, or preparing timber or any product of the forest for sale, profit, or commercial use.

(2) Extracting, refining, or producing any oil or natural gas for sale, profit, or commercial use.

(b) The rate specified in subsection (a) above shall be applied to the value of the entire product extracted, refined, produced, or prepared for sale, profit, or commercial use, when such activity occurs within the City, regardless of the place of sale of the product or the fact that delivery may be made to a point without the City or without the State.

(c) If any person engaging in any business classified in this Section ships or transports products, or any part thereof, out of the State without making sale of such products, or ships his products outside of the State in an unfinished condition, the value of the products or articles in the condition or form in which they existed when transported out-of-state and before they enter interstate commerce shall be the basis for assessment of the tax imposed by this Section.

(d) Reserved.

(Ord. No. 87.17, § 1, 4-23-87; Ord. No. 93.37, 10-14-93; Ord. No. 95.03, 1-12-95; Ord. No. 96.41, 10-24-96; Ord. No. 2000.37, 9-14-00; Ord. No. 2010.20, 6-24-10; Ord. No. O2014.21, 5-22-14)

Sec. 16-432. Mining.

(a) The tax rate shall be at an amount equal to one tenth of one percent (.1%), not to exceed one tenth of one percent, of the gross income from the business activity upon every person engaging or continuing in the business of mining, smelting, or producing for sale, profit, or commercial use any copper, gold, silver, or other mineral product, compound, or combination of mineral products; but not including the extraction, removal, or production of sand, gravel, or rock from the ground for sale, profit, or commercial use.

(b) The rate specified in subsection (a) above shall be applied to the value of the entire product mined, smelted or produced for sale, profit, or commercial use, when such activity occurs within the City, regardless of the place of sale of the product or the fact that delivery may be made to a point without the City or without the State.

(c) If any person engaging in any business classified in this Section ships or transports products, or any part thereof, out of the State without making sale of such products, or ships his products outside of the State in an unfinished condition, the value of the products or articles in the condition or form in which they existed when transported out-of-state and before they enter interstate commerce shall be the basis for assessment of the tax imposed by this Section.

(Ord. No. 95.03, 1-12-95)

Sec. 16-435. Publishing and periodicals distribution.

(a) The tax rate shall be at an amount equal to one and eight-tenths percent (1.8%) of the gross income from the business activity upon every person engaging or continuing in the business activity of:

(1) Publication of newspapers, magazines, or other periodicals when published within the City, measured by the gross income derived from notices, subscriptions, and local advertising as defined in Section 16-405. In cases where the location of publication is both within and without this State, gross income subject to the tax shall refer only to gross income derived from residents of this State or generated by permanent business locations within this State.

(2) Distribution or delivery within the City of newspapers, magazines, or other periodicals not published within the City, measured by the gross income derived from subscriptions.

(b) "Location of publication" is determined by:

(1) Location of the editorial offices of the publisher, when the physical printing is not performed by the publisher; or

(2) Location of either the editorial offices or the printing facilities, if the publisher performs his own physical printing.

(c) "Subscription income" shall include all circulation revenue of the publisher except amounts retained by or credited to carriers or other vendors as compensation for delivery within the State by such carriers or vendors, and further except sales of published items, directly or through distributors, for the purpose of resale, to retailers subject to the Privilege Tax on such resale.

(d) "Circulation", for the purpose of measurement of gross income subject to the tax, shall be considered to occur at the place of delivery of the published items to the subscriber or intended reader irrespective of the location of the physical facilities or personnel of the publisher. However, delivery by the United States mails shall be considered to have occurred at the location of publication.

(e) *Allocation of taxes between cities and towns.* In cases where publication or distribution occurs in more than one city or town, the measurement of gross income subject to tax by the City shall include:

(1) That portion of the gross income from publication which reflects the ratio of circulation within this City to circulation in all incorporated cities and towns in this State having substantially similar provisions; plus

(2) Only when publication occurs within the City, that portion of the remaining gross income from publication which reflects the ratio of circulation within this City to the total circulation of all incorporated cities or towns in this State within which cities the taxpayer maintains a location of publication.

(f) The tax imposed by this Section shall not apply to sales of newspapers, magazines or other periodicals to a qualifying hospital, qualifying community health center or a qualifying health care organization, except when the property sold is for use in activities resulting in gross income from unrelated business income as that term is defined in 26 U.S.C. Section 512.
(Ord. No. 87.17, § 1, 4-23-87; Ord. No. 88.32, 1(9), 4-28-88; Ord. No. 93.37, 10-14-93; Ord. No. 96.41, 10-24-96; Ord. No. 98.37, 06-25-98; Ord. No. 2000.37, 9-14-00; Ord. No. 2010.20, 6-24-10; Ord. No. O2014.21, 5-22-14)

Sec. 16-440. Reserved.
(Ord. No. 87.17, § 1, 4-23-87)

Sec. 16-444. Hotels.

The tax rate shall be at an amount equal to one and eight-tenths percent (1.8%) of the gross income from the business activity upon every person engaging or continuing in the business of operating a hotel charging for lodging and/or lodging space furnished to any:

(a) Person.

(b) *Exclusions*. The tax imposed by this Section shall not include:

(1) Income derived from incarcerating or detaining prisoners who are under the jurisdiction of the United States, this state or any other state or a political subdivision of this state or of any other state in a privately operated prison, jail or detention facility.

(2) Gross proceeds of sales or gross income that is properly included in another business activity under this article and that is taxable to the person engaged in that business activity, but the gross proceeds of sales or gross income to be deducted shall not exceed the consideration paid to the person conducting the activity.

(3) Gross proceeds of sales or gross income from transactions or activities that are not limited to transients that would not be taxable if engaged in by a person not subject to tax under this article.

(4) Gross proceeds of sales or gross income from transactions or activities that are not limited to transients and that would not be taxable if engaged in by a person subject to taxation under Section 16-410 or Section 16-475 due to an exclusion, exemption or deduction.

(5) Gross proceeds of sales or gross income from commissions received from a person providing services or property to the customers of the hotel. However, such commissions may be subject to tax under Section 16-445 or Section 16-450 as rental, leasing or licensing for use of real or tangible personal property.

(6) Income from providing telephone, fax or internet services to customers at an additional charge, that is separately stated to the customer and is separately maintained in the hotel's books and records. However, such gross proceeds of sales or gross income may be subject to tax under Section 16-470 as telecommunication services.

(Ord. No. 90.25, 7-12-90; Ord. No. 93.37, 10-14-93; Ord. No. 96.41, 10-24-96; Ord. No. 99.40, 12-16-99; Ord. No. 2000.37, 9-14-00; Ord. No. 2007.20, 4-19-07; Ord. No. 2010.20, 6-24-10; Ord. No. O2014.21, 5-22-14)

Sec. 16-445. Rental, leasing, and licensing for use of real property.

(a) The tax rate shall be at an amount equal to one and eight-tenths percent (1.8%) of the gross income from the business activity upon every person engaging or continuing in the business of leasing, or renting real property located within the City for a consideration, to the tenant in actual possession, or the licensing for use of real property to the final licensee located within the City for a consideration, including any improvements, rights, or interest in such property; provided further that:

(1) Payments made by the lessee to, or on behalf of, the lessor for property taxes, repairs, or improvements are considered to be part of the taxable gross income.

(2) Charges for such items as telecommunications, utilities, pet fees, or maintenance are considered to be part of the taxable gross income.

(3) However, if the lessor engages in telecommunication activity, as evidenced by installing individual metering equipment and by billing each tenant based upon actual usage, such activity is taxable under Section 16-470.

(b) If individual utility meters have been installed for each tenant and the lessor separately charges each single tenant for the exact billing from the utility company, such charges are exempt.

(c) Charges by a qualifying hospital, qualifying community health center or a qualifying health care organization to patients of such facilities for use of rooms or other real property during the course of their treatment by such facilities are exempt.

(d) Charges for joint pole usage by a person engaged in the business of providing or furnishing utility or telecommunication services to another person engaged in the business of providing or furnishing utility or telecommunication services are exempt from the tax imposed by this Section.

(e) Exempt from the tax imposed by this Section is gross income derived from the rental, leasing, or licensing for use of real property to a qualifying hospital, qualifying community health center or a qualifying health care organization, except when the property so rented, leased, or licensed is for use in activities resulting in gross income from unrelated business income as that term is defined in 26 U.S.C. Section 512.

(f) Reserved.

(g) Reserved.

(h) Reserved.

(i) Reserved.

(j) Exempt from the tax imposed by this Section is gross income derived from the activities taxable under Section 16-444 of this code.

(k) Reserved.

(l) Reserved.

(m) Reserved.

(n) Notwithstanding the provisions of Section 16-200(b), the fair market value of one (1) apartment, in an apartment complex provided rent free to an employee of the apartment complex is not subject to the tax imposed by this Section. For an apartment complex with more than fifty (50) units, an additional apartment provided rent free to an employee for every additional fifty (50) units is not subject to the tax imposed by this Section.

(o) Income derived from incarcerating or detaining prisoners who are under the jurisdiction of the United States, this State or any other state or a political subdivision of this State or of any other state in a privately operated prison, jail or detention facility is exempt from the tax imposed by this Section.

(p) Charges by any hospital, any licensed nursing care institution, or any kidney dialysis facility to patients of such facilities for the use of rooms or other real property during the course of their treatment by such facilities are exempt.

(q) Charges to patients receiving "personal care" or "directed care", by any licensed assisted living facility, licensed assisted living center or licensed assisted living home as defined and licensed pursuant to Chapter 4, Title 36, Arizona Revised Statutes and Title 9 of the Arizona Administrative Code are exempt.

(r) Income received from the rental of any "low-income unit" as established under Section 42 of the Internal Revenue Code, including the low-income housing credit provided by IRC Section 42, to the extent that the collection of tax on rental income causes the "gross rent" defined by IRC Section 42 to exceed the income limitation for the low-income unit is exempt. This exemption also applies to income received from the rental of individual rental units subject to statutory or regulatory "low-income unit" rent restrictions similar to IRC Section 42 to the extent that the collection of tax from the tenant causes the rental receipts to exceed a rent restriction for the low-income unit. This subsection also applies to rent received by a person other than the owner or lessor of the low-income unit, including a broker. This subsection does not apply unless a taxpayer maintains the documentation to support the qualification of a unit as a low-income unit, the "gross rent" limitation for the unit and the rent received from that unit.

(s) The gross proceeds of a commercial lease of real property between affiliated companies, businesses, persons or reciprocal insurers are exempt. For purposes of this

paragraph:

(1) "Affiliated companies, businesses, persons or reciprocal insurers" means the lessor holds a controlling interest in the lessee, the lessee holds a controlling interest in the lessor, an affiliated entity holds a controlling interest in both the lessor and the lessee or an unrelated person holds a controlling interest in both the lessor and lessee.

(2) "Controlling interest" means direct or indirect ownership of at least eighty percent (80%) of the voting shares of a corporation or of the interests in a company, business or person other than a corporation.

(3) "Reciprocal insurer" has the same meaning as prescribed in A.R.S. Section 20-762.

(Ord. No. 87.17, § 1, 4-23-87; Ord. No. 90.25, 7-12-90; Ord. No. 93.37, 10-14-93; Ord. No. 95.03, 1-12-95; Ord. No. 96.41, 10-24-96; Ord. No. 98.37, 06-25-98; Ord. No. 99.40, 12-16-99; Ord. No. 2000.37, 9-14-00; Ord. No. 2006.44, 6-15-06; Ord. No. 2007.20, 4-19-07; Ord. No. 2010.20, 6-24-10; Ord. No. 2011.31, 9-8-11; Ord. No. O2014.01, 1-9-14; Ord. No. O2014.21, 5-22-14)

Sec. 16-446. Reserved.

(Ord. No. 88.32, § 1(10), 4-28-88)

Sec. 16-447. Rental, leasing, and licensing for use of real property—Additional tax upon transient lodging.

In addition to the taxes levied as provided in Section 16-444, there is hereby levied and shall be collected an additional tax in an amount equal to five percent (5%) of the gross income from the business activity of any hotel engaging or continuing within the City in the business of charging for lodging and/or lodging space furnished to any transient.

(Ord. No. 88.33, § 1, 4-28-88; Ord. No. 90.25, 7-12-90; Ord. No. 2002.46, 11-21-02; Ord. No. 2007.20, 4-19-07; Ord. No. 2010.10, 5-6-10)

Sec. 16-450. Rental, leasing, and licensing for use of tangible personal property.

(a) The tax rate shall be at an amount equal to one and eight-tenths percent (1.8%) of the gross income from the business activity upon every person engaging or continuing in the business of leasing, licensing for use, or renting tangible personal property for a consideration, including that which is semi-permanently or permanently installed within the City as provided by Regulation.

(b) *Special provisions relating to long term motor vehicle leases*. A lease transaction involving a motor vehicle for a minimum period of twenty-four (24) months shall be considered to have occurred at the location of the motor vehicle dealership, rather than the location of the place of business of the lessor, even if the lessor's interest in the lease and its proceeds are sold, transferred, or otherwise assigned to a lease financing institution; provided further that the city or town where such motor vehicle dealership is located levies a Privilege Tax or an equivalent excise tax upon the transaction.

(c) Gross income derived from the following transactions shall be exempt from Privilege Taxes imposed by this Section:

(1) Rental, leasing, or licensing for use of tangible personal property to persons engaged or continuing in the business of leasing, licensing for use, or rental of such property.

(2) Rental, leasing, or licensing for use of tangible personal property that is semi-permanently or permanently installed within another city or town that levies an equivalent excise tax on the transaction.

(3) Rental, leasing, or licensing for use of film, tape, or slides to a theater or other person taxed under Section 16-410, or to a radio station, television station, or subscription television system.

(4) Rental, leasing, or licensing for use of the following:

(A) Prosthetics.

(B) Income-producing capital equipment.

(C) Mining and metallurgical supplies.

These exemptions include the rental, leasing, or licensing for use of tangible personal property which, if it had been purchased instead of leased, rented, or licensed by the lessee or licensee, would qualify as income-producing capital equipment or mining and metallurgical supplies.

(5) Rental, leasing, or licensing for use of tangible personal property to a qualifying hospital, qualifying community health center or a qualifying health care organization, except when the property so rented, leased, or licensed is for use in activities resulting in gross income from unrelated business income as that term is defined in 26 U.S.C. Section 512 or rental, leasing, or licensing for use of tangible personal property in this State by a nonprofit charitable organization that has qualified under Section 501(c)(3) of the United States Internal Revenue Code and that engages in and uses such property exclusively for training, job placement or rehabilitation programs or testing for mentally or physically handicapped persons.

(6) Separately billed charges for delivery, installation, repair, and/or maintenance as provided by Regulation.

(7) Charges for joint pole usage by a person engaged in the business of providing or furnishing utility or telecommunication services to another person engaged in the business of providing or furnishing utility or telecommunication services.

(8) Reserved.

(9) Rental, leasing, or licensing of aircraft that would qualify as aircraft acquired for use outside the State, as prescribed by Regulation, if such rental, leasing, or licensing had been a sale.

(10) Rental, leasing or licensing for use of an alternative fuel vehicle if such vehicle was manufactured as a diesel fuel vehicle and converted to operate on alternative fuel and equipment that is installed in a conventional diesel fuel motor vehicle to convert the vehicle to operate on an alternative fuel, as defined in A.R.S. Section 1-215.

(11) Rental, leasing, and licensing for use of solar energy devices, for taxable periods beginning from and after July 1, 2008. The lessor shall register with the Department of Revenue as a solar energy retailer. By registering, the lessor acknowledges that it will make its books and records relating to leases of solar energy devices available to the Department of Revenue and city, as applicable, for examination.

(12) Leasing or renting certified ignition interlock devices installed pursuant to the requirements prescribed by A.R.S. Section 28-1461. For the purposes of this paragraph, "certified ignition interlock device" has the same meaning prescribed in A.R.S. Section 28-1301.

(Ord. No. 87.17, § 1, 4-23-87; Ord. No. 93.37, 10-14-93; Ord. No. 95.03, 1-12-95: Ord. No. 96.41, 10-24-96; Ord. No. 98.37, 6-25-98; Ord. No. 99.40, 12-16-99; Ord. No. 2000.37, 9-14-00; Ord. No. 2001.16, 7-26-01; Ord. No. 2007.20, 4-19-07; Ord. No. 2010.09, 5-6-10; Ord. No. 2010.20, 6-24-10; Ord. No. O2014.01, 1-9-14; Ord. No. O2014.21, 5-22-14)

Sec. 16-452. Reserved.
(Ord. No. 90.25, 7-12-90)

Sec. 16-455. Restaurants and bars.

(a) The tax rate shall be at an amount equal to one and eight-tenths percent (1.8%) of the gross income from the business activity upon every person engaging or continuing in the business of preparing or serving food or beverage in a bar, cocktail lounge, restaurant, or similar establishment where articles of food or drink are prepared or served for consumption on or off the premises, including also the activity of catering. Cover charges and minimum charges must be included in the gross income of this business activity.

(b) Caterers and other taxpayers subject to the tax who deliver food and/or serve such food off premises shall also be allowed to exclude separately charged delivery, set-up, and clean-up charges, provided that the charges are also maintained separately in the books and records. When a taxpayer delivers food and/or serves such food off premises, his regular business location shall still be deemed the location of the transaction for the purposes of the tax imposed by this Section.

(c) The tax imposed by this Section shall not apply to sales to a qualifying hospital, qualifying community health center or a qualifying health care organization, except when sold for use in activities resulting in gross income from unrelated business income as that term is defined in 26 U.S.C. Section 512.

(d) The tax imposed by this Section shall not apply to sales of food, beverages, condiments and accessories used for serving food and beverages to a commercial airline, as defined in A.R.S. Section 42-5061(A)(49), that serves the food and beverages to its passengers, without additional charge, for consumption in flight.

(e) The tax imposed by this Section shall not apply to sales of prepared food, beverages, condiments or accessories to a public educational entity, pursuant to any of the provisions of Title 15, Arizona Revised Statutes, to the extent such items are to be prepared or served to individuals for consumption on the premises of a public educational entity during school hours.

(f) For the purposes of this Section, "accessories" means paper plates, plastic eating utensils, napkins, paper cups, drinking straws, paper sacks or other disposable containers, or other items which facilitate the consumption of the food.
(Ord. No. 87.17, § 1, 4-23-87; Ord. No. 88.32, § 1(11), 4-28-88; Ord. No. 93.37, 10-14-93; Ord. No. 96.41, 10-24-96; Ord. No. 98.37, 6-25-98; Ord. No. 2000.37, 9-14-00; Ord. No. 2007.20, 4-19-07; Ord. No. 2010.20, 6-24-10; Ord. No. O2014.21, 5-22-14)

Sec. 16-460. Retail sales—Measure of tax; burden of proof; exclusions.

(a) The tax rate shall be at an amount equal to one and eight-tenths percent (1.8%) of the gross income from the business activity upon every person engaging or continuing in the business of selling tangible personal property at retail.

(b) The burden of proving that a sale of tangible personal property is not a taxable retail sale shall be upon the person who made the sale.

(c) *Exclusions*. For the purposes of this Chapter, sales of tangible personal property shall not include:

(1) Sales of stocks, bonds, options, or other similar materials.

(2) Sales of lottery tickets or shares pursuant to Article I, Chapter 5, Title 5, Arizona Revised Statutes.

(3) Sales of platinum, bullion, or monetized bullion, except minted or manufactured coins transferred or acquired primarily for their numismatic value as prescribed by Regulation.

(4) Gross income derived from the transfer of tangible personal property which is specifically included as the gross income of a business activity upon which another Section of this Article imposes a tax, shall be considered gross income of that business activity, and are not includable as gross income subject to the tax imposed by this Section.

(5) Sales by professional or personal service occupations where such sales are inconsequential elements of the service provided.

(6) Sales of cash equivalents. The gross proceeds of sales or gross income derived from the redemption of any cash equivalent by the holder as a means of payment for goods or services that are taxable under this article is subject to the tax. "Cash equivalents" means items or intangibles, whether or not negotiable, that are sold to one or more persons, through which a value denominated in money is purchased in advance and may be redeemed in full or in part for tangible personal property, intangibles or services. Cash equivalents include gift cards, stored value cards, gift certificates, vouchers, traveler's checks, money orders or other instruments, orders or electronic mechanisms, such as an electronic code, personal identification number or digital payment mechanism, or any other prepaid intangible right to acquire tangible personal property, intangibles or services in the future, whether from the seller of the cash equivalent or from another person. Cash equivalents do not include either of the following:

(A) Items or intangibles that are sold to one or more persons, through which a value is not denominated in money.

(B) Prepaid calling cards or prepaid authorization numbers for telecommunications services made taxable by subsection (g) of this Section.

(d) Reserved.

(e) When this City and another Arizona city or town with an equivalent excise tax could claim nexus for taxing a retail sale, the city or town where the permanent business location of the seller at which the order was received shall be deemed to have precedence, and for the purposes of this Chapter such city or town has sole and exclusive right to such tax.

(f) The appropriate tax liability for any retail sales where the order is received at a permanent business location of the seller located in this City or in an Arizona city or town that levies an equivalent excise tax shall be at the tax rate of the city or town of such seller's location.

(g) Retail sales of prepaid calling cards or prepaid authorization numbers for telecommunications services, including sales of reauthorization of a prepaid card or authorization number, are subject to tax under this Section.
(Ord. No. 87.17, § 1, 4-23-87; Ord. No. 93.37, 10-14-93; Ord. No. 96.41, 10-24-96; Ord. No. 96.43, 12-12-96; Ord. No. 99.40, 12-16-99; Ord. No. 2000.37, 9-14-00; Ord. No. 2010.20, 6-24-10; Ord. No. O2014.01, 1-9-14; Ord. No. O2014.21, 5-22-14)

Sec. 16-462. Retail sales—Food for home consumption.

(a) The tax rate shall be at an amount equal to one and eight-tenths percent (1.8%) of the gross income from the business activity upon every person engaging or continuing in the business of selling food for home consumption at retail.

(b) For the purposes of this section only, the following definitions shall be applicable:

(1) *Eligible grocery business* means an establishment whose sales of food are such that it is eligible to participate in the food stamp program established by the

Food Stamp Act of 1977 (P.L. 95-113; 91 Stat. 958.7 U.S.C. Section 2011 et seq.), according to regulations in effect on January 1, 1979. An establishment is deemed eligible to participate in the food stamp program if it is authorized to participate in the program by the United States Department of Agriculture Food and Nutrition Service Field Office on the effective date of this section, or if, prior to a reporting period for which the return is filed, such retailer proves to the satisfaction of the Tax Collector that the establishment, based on the nature of the retailer's food sales, could be eligible to participate in the Food Stamp Program established by the Food Stamp Act of 1977 according to regulations in effect on January 1, 1979.

(2) F*acilities for the consumption of food* means tables, chairs, benches, booths, stools, counters, and similar conveniences, trays, glasses, dishes, or other tableware and parking areas for the convenience of in-car consumption of food in or on the premises on which the retailer conducts business.

(3) *Food for consumption on the premises* means any of the following:

(A) "Hot prepared food" as defined below.

(B) Hot or cold sandwiches.

(C) Food served by an attendant to be eaten at tables, chairs, benches, booths, stools, counters, and similar conveniences and within parking areas for the convenience of in-car consumption of food.

(D) Food served with trays, glasses, dishes, or other tableware.

(E) Beverages sold in cups, glasses, or open containers.

(F) Food sold by caterers.

(G) Food sold within the premises of theatres, movies, operas, shows of any type or nature, exhibitions, concerts, carnivals, circuses, amusement parks, fairs, races, contests, games, athletic events, rodeos, billiard and pool parlors, bowling alleys, public dances, dance halls, boxing, wrestling and other matches, and any business which charges admission, entrance, or cover fees for exhibition, amusement, entertainment, or instruction.

(H) Any items contained in subsections (a)(3)(A) through (G) above even though they are sold on a "take-out" or "to go" basis, and whether or not the item is packaged, wrapped, or is actually taken from the premises.

(4) *Hot prepared food* means those products, items, or ingredients of food which are prepared and intended for consumption in a heated condition. "Hot prepared food" includes a combination of hot and cold food items or ingredients if a single price has been established.

(5) P*remises* means the total space and facilities in or on which a vendor conducts business and which are owned or controlled, in whole or in part, by a vendor or

which are made available for the use of customers of the vendor or group of vendors, including any building or part of a building, parking lot, or grounds.

(6) *Food for home consumption* means all food, except food for consumption on the premises, if sold by any of the following:

(A) An eligible grocery business.

(B) A person who conducts a business whose primary business is not the sale of food but who sells food which is displayed, packaged, and sold in a similar manner as an eligible grocery business.

(C) A person who sells food and does not provide or make available any facilities for the consumption of food on the premises.

(D) A person who conducts a delicatessen business either from a counter which is separate from the place and cash register where taxable sales are made or from a counter which has two cash registers and which are used to record taxable and tax exempt sales, or a retailer who conducts a delicatessen business who uses a cash register which has at least two tax computing keys which are used to record taxable and tax exempt sales.

(E) Vending machines and other types of automatic retailers.

(F) A person's sales of food, drink and condiment for consumption within the premises of any prison, jail or other institution under the jurisdiction of the State Department of Corrections, the Department of Public Safety, the Department of Juvenile Corrections or a County Sheriff.

(c) Income derived from the following sources is exempt from the tax imposed by this section:

(1) Sales of food for home consumption to a person regularly engaged in the business of selling such property.

(2) Out-of-city sales or out-of-state sales.

(3) Charges for delivery or other "direct customer services" as prescribed by regulation.

(4) Food purchased with food stamps provided through the Food Stamp Program established by the Food Stamp Act of 1977 (P.L. 95-113; 91 Stat. 958.7 U.S.C. Section 2011 et seq.) or purchased with food instruments issued under Section 17 of the Child Nutrition Act (P.L. 95-627; 92 Stat. 3603; and P.L. 99-669; Section 4302; 42 U.S.C. Section 1786) but only to the extent that food stamps or food instruments were actually used to purchase such food.

(5) Sales of food products by producers as provided for by A.R.S. Sections 3-561, 3-562 and 3-563.

(6) Sales of food, beverages, condiments and accessories to a public educational entity, pursuant to any of the provisions of Title 15, Arizona Revised Statutes, including a regularly organized private or parochial school that offers an educational program for grade twelve or under which may be attended in substitution for a public school pursuant to A.R.S. Section 15-802 ; to the extent such items are to be prepared or served to individuals for consumption on the premises of a public educational entity during school hours. For the purposes of this subsection, "accessories" means paper plates, plastic eating utensils, napkins, paper cups, drinking straws, paper sacks or other disposable containers, or other items which facilitate the consumption of the food.

(7) Sales of food, beverages, condiments and accessories to a nonprofit charitable organization that has qualified as an exempt organization under 26 U.S.C. Section 501(c)(3) and regularly serves meals to the needy and indigent on a continuing basis at no cost. For the purposes of this subsection, "accessories" means paper plates, plastic eating utensils, napkins, paper cups, drinking straws, paper sacks or other disposable containers, or other items which facilitate the consumption of the food.

(d) Reporting. Such persons who sell food for home consumption shall, in conjunction with the return required pursuant to Section 16-520, report to the tax collector in a manner prescribed by the tax collector all sales of food for home consumption exempted from taxes imposed by this Chapter.

(e) Recordkeeping.

(1) Retailers shall maintain accurate, verifiable, and complete records of all purchases and sales of tangible personal property in order to verify exemptions from taxes imposed by this Chapter. A retailer may use any method of reporting that properly reflects all purchases and sales of food for home consumption, as well as all purchases and sales of items subject to taxes imposed by this Chapter, provided that such records are maintained in accordance with Article III, and regulations of the Tax Collector.

(2) Any person who fails to maintain records as provided herein shall be deemed to have had no sales of food for home consumption, and if upon request by the Tax Collector, a person cannot demonstrate to the Tax Collector that such records and reports do properly reflect all sales of food for home consumption, the Tax Collector may recompute the amount of tax to be paid as provided in Sections 16-370 and 16-545(b).

(Ord. No. O2014.01, 1-9-14)

Sec. 16-465. Retail sales—Exemptions.

Income derived from the following sources is exempt from the tax imposed by Section 16-460:

(a) Sales of tangible personal property to a person regularly engaged in the business of selling such property.

(b) Out-of-city sales or out-of-state sales.

(c) Charges for delivery, installation, or other direct customer services as prescribed by Regulation.

(d) Charges for repair services as prescribed by Regulation, when separately charged and separately maintained in the books and records of the taxpayer.

(e) Sales of warranty, maintenance, and service contracts, when separately charged and separately maintained in the books and records of the taxpayer.

(f) Sales of prosthetics.

(g) Sales of income-producing capital equipment.

(h) Sales of rental equipment and rental supplies.

(i) Sales of mining and metallurgical supplies.

(j) Sales of motor vehicle fuel and use fuel which are subject to a tax imposed under the provisions of Article I or II, Chapter 16, Title 28, Arizona Revised Statutes; or sales of use fuel to a holder of a valid single trip use fuel tax permit issued under A.R.S. Section 28-5739, or sales of natural gas or liquefied petroleum gas used to propel a motor vehicle.

(k) Sales of tangible personal property to a construction contractor who holds a valid Privilege Tax License for engaging or continuing in the business of construction contracting where the tangible personal property sold is incorporated into any structure or improvement to real property as part of construction contracting activity.

(l) Sales of motor vehicles to nonresidents of this State for use outside this State if the vendor ships or delivers the motor vehicle to a destination outside this State.

(m) Sales of tangible personal property which directly enters into and becomes an ingredient or component part of a product sold in the regular course of the business of job printing, manufacturing, or publication of newspapers, magazines, or other periodicals. Tangible personal property which is consumed or used up in a manufacturing, job printing, publishing, or production process is not an ingredient nor component part of a product.

(n) Sales made directly to the Federal government to the extent of:

(1) One hundred percent (100%) of the gross income derived from retail sales made by a manufacturer, modifier, assembler, or repairer.

(2) Fifty percent (50%) of the gross income derived from retail sales made by any other person.

(o) Sales to hotels, bars, restaurants, dining cars, lunchrooms, boarding houses, or similar establishments of articles consumed as food, drink, or condiment, whether simple, mixed, or compounded, where such articles are customarily prepared or served to patrons for consumption on or off the premises, where the purchaser is properly licensed and paying a tax under Section 16-455 or the equivalent excise tax upon such income.

(p) Sales of tangible personal property to a qualifying hospital, qualifying community health center or a qualifying health care organization, except when the property sold is for use in activities resulting in gross income from unrelated business income as that term is defined in 26 U.S.C. Section 512 or sales of tangible personal property purchased in this State by a nonprofit charitable organization that has qualified under Section 501(c)(3) of the United States Internal Revenue Code and that engages in and uses such property exclusively for training, job placement or rehabilitation programs or testing for mentally or physically handicapped persons.

(q) Reserved.

(r) Reserved.

(1) Reserved.

(2) Reserved.

(3) Reserved.

(4) Reserved.

(s) Sales of groundwater measuring devices required by A.R.S. Section 45-604.

(t) Sales of paintings, sculptures or similar works of fine art, provided that such works of fine art are sold by the original artist; and provided further that sales of "art creations", such as jewelry, macrame, glasswork, pottery, woodwork, metalwork, furniture, and clothing, when such "art creations" have a dual purpose, both aesthetic and utilitarian, are not exempt, whether sold by the artist or by another.

(u) Sales of aircraft acquired for use outside the State, as prescribed by Regulation.

(v) Sales of food products by producers as provided for by A.R.S. Sections 3-561, 3-562 and 3-563.

(w) Reserved.

(x) Sales of food and drink to a person who is engaged in business that is classified under the restaurant classification and that provides such food and drink without monetary charge to its employees for their own consumption on the premises during such employees' hours of employment.

(y) Reserved.

(z) Reserved.

(aa) The sale of tangible personal property used in remediation contracting as defined in Section 16-100 and Regulation 16-100.5.

(bb) Sales of materials that are purchased by or for publicly funded libraries including school district libraries, charter school libraries, community college libraries, state university libraries or federal, state, county or municipal libraries for use by the public as follows:

(1) Printed or photographic materials.

(2) Electronic or digital media materials.

(cc) Sales of food, beverages, condiments and accessories used for serving food and beverages to a commercial airline, as defined in A.R.S. Section 42-5061(A)(49), that serves the food and beverages to its passengers, without additional charge, for consumption in flight. For the purposes of this subsection, "accessories" means paper plates, plastic eating utensils, napkins, paper cups, drinking straws, paper sacks or other disposable containers, or other items which facilitate the consumption of the food.

(dd) In computing the tax base in the case of the sale or transfer of wireless telecommunication equipment as an inducement to a customer to enter into or continue a contract for telecommunication services that are taxable under Section 16-470, gross proceeds of sales or gross income does not include any sales commissions or other compensation received by the retailer as a result of the customer entering into or continuing a contract for the telecommunications services.

(ee) For the purposes of this Section, a sale of wireless telecommunication equipment to a person who holds the equipment for sale or transfer to a customer as an inducement to enter into or continue a contract for telecommunication services that are taxable under Section 16-470 is considered to be a sale for resale in the regular course of business.

(ff) Sales of alternative fuel as defined in A.R.S. Section 1-215, to a used oil fuel burner who has received a Department of Environmental Quality permit to burn used oil or used oil fuel under A.R.S. Section 49-426 or Section 49-480.

(gg) Sales of food, beverages, condiments and accessories to a public educational entity, pursuant to any of the provisions of Title 15, Arizona Revised Statues, including a regularly organized private or parochial school that offers an educational program for

grade twelve or under which may be attended in substitution for a public school pursuant to A.R.S. 15-802; to the extent such items are to be prepared or served to individuals for consumption on the premises of a public educational entity during school hours. For the purposes of this subsection, "accessories" means paper plates, plastic eating utensils, napkins, paper cups, drinking straws, paper sacks or other disposable containers, or other items which facilitate the consumption of the food.

(hh) Sales of personal hygiene items to a person engaged in the business of and subject to tax under Section 16-444 of this code if the tangible personal property is furnished without additional charge to and intended to be consumed by the person during his occupancy.

(ii) For the purposes of this Section, the diversion of gas from a pipeline by a person engaged in the business of operating a natural or artificial gas pipeline, for the sole purpose of fueling compressor equipment to pressurize the pipeline, is not a sale of the gas to the operator of the pipeline.

(jj) Sales of food, beverages, condiments and accessories to a nonprofit charitable organization that has qualified as an exempt organization under 26 U.S.C. Section 501(c)(3) and regularly serves meals to the needy and indigent on a continuing basis at no cost. For the purposes of this subsection, "accessories" means paper plates, plastic eating utensils, napkins, paper cups, drinking straws, paper sacks or other disposable containers, or other items which facilitate the consumption of the food.

(kk) Sales of motor vehicles that use alternative fuel if such vehicle was manufactured as a diesel fuel vehicle and converted to operate on alternative fuel and sales of equipment that is installed in a conventional diesel fuel motor vehicle to convert the vehicle to operate on an alternative fuel, as defined in A.R.S. Section 1-215.

(ll) Sales of solar energy devices, for taxable periods beginning from and after July 1, 2008. The retailer shall register with the Department of Revenue as a solar energy retailer. By registering, the retailer acknowledges that it will make its books and records relating to sales of solar energy devices available to the Department of Revenue and City, as applicable, for examination.

(mm) Sales or other transfers of renewable energy credits or any other unit created to track energy derived from renewable energy resources. For the purposes of this paragraph, "renewable energy credit" means a unit created administratively by the Corporation Commission or governing body of a public power utility to track kilowatt hours of electricity derived from a renewable energy resource or the kilowatt hour equivalent of conventional energy resources displaced by distributed renewable energy resources.

(nn) Sales of magazines or other periodicals or other publications by this State to encourage tourist travel.

(oo) Sales of paper machine clothing, such as forming fabrics and dryer felts, sold to a paper manufacturer and directly used or consumed in paper manufacturing.

(pp) Sales of overhead materials or other tangible personal property that is used in performing a contract between the United States government and a manufacturer, modifier, assembler or repairer, including property used in performing a subcontract with a government contractor who is a manufacturer, modifier, assembler or repairer, to which title passes to the government under the terms of the contract or subcontract.

(qq) Sales of coal, petroleum, coke, natural gas, virgin fuel oil and electricity sold to a qualified environmental technology manufacturer, producer or processor as defined in A.R.S. Section 41-1514.02 and directly used or consumed in the generation or provision of on-site power or energy solely for environmental technology manufacturing, producing or processing or environmental protection. This paragraph shall apply for twenty (20) full consecutive calendar or fiscal years from the date the first paper manufacturing machine is placed in service. In the case of an environmental technology manufacturer, producer or processor who does not manufacture paper, the time period shall begin with the date the first manufacturing, processing or production equipment is placed in service.

(rr) Sales or gross income derived from sales of machinery, equipment, materials and other tangible personal property used directly and predominantly to construct a qualified environmental technology manufacturing, producing or processing facility as described in A.R.S. Section 41-1514.02. This subsection applies for ten (10) full consecutive calendar or fiscal years after the start of initial construction.

(Ord. No. 87.17, § 1, 4-23-87; Ord. No. 88.32, 1(12), 4-28-88; Ord. No. 95.03, 1-12-95; Ord. No. 96.43, 12-12-96; Ord. No. 98.12, 3-12-98; Ord. No. 98.37, 06-25-98; Ord. No. 99.40, 12-16-99; Ord. No. 2001.16, 7-26-01; Ord. No. 2007.20, 4-19-07; Ord. No. 2008.26, 8-14-08; Ord. No. O2014.01, 1-9-14)

Sec. 16-470. Telecommunication services.

(a) The tax rate shall be at an amount equal to one and eight-tenths percent (1.8%) of the gross income from the business activity upon every person engaging or continuing in the business of providing telecommunication services to consumers within this City.

(1) Telecommunication services shall include:

(A) Two-way voice, sound, and/or video communication over a communications channel.

(B) One-way voice, sound, and/or video transmission or relay over a communications channel.

(C) Facsimile transmissions.

(D) Providing relay or repeater service.

(E) Providing computer interface services over a communications channel.

(F) Time-sharing activities with a computer accomplished through the use of a communications channel.

(2) Gross income from the business activity of providing telecommunication services to consumers within this City shall include:

(A) All fees for connection to a telecommunication system.

(B) Toll charges, charges for transmissions, and charges for other telecommunications services; provided that such charges relate to transmissions originating in the City and terminating in this State.

(C) Fees charged for access to or subscription to or membership in a telecommunication system or network.

(D) Charges for monitoring services relating to a security or burglar alarm system located within the City where such system transmits or receives signals or data over a communications channel.

(E) Charges for telephone, fax or internet access services provided at an additional charge by a hotel business subject to taxation under Section 16-444.

(b) *Resale telecommunication services*. Gross income from sales of telecommunication services to another provider of telecommunication services for the purpose of providing the purchaser's customers with such service shall be exempt from the tax imposed by this Section; provided, however, that such purchaser is properly licensed by the City to engage in such business.

(c) *Interstate transmissions.* Charges by a provider of telecommunication services for transmissions originating in the City and terminating outside the State are exempt from the tax imposed by this Section.

(d) Reserved.

(e) Reserved.

(f) *Prepaid calling cards.* Telecommunications services purchased with a prepaid calling card that are taxable under Section 16-460 are exempt from the tax imposed under this Section.

(g) *Internet access services.* The gross income subject to tax under this Section shall not include sales of internet access services to the person’s subscribers and customers. For the purposes of this subsection:

(1) *"Internet"* means the computer and telecommunications facilities that comprise the interconnected worldwide network of networks that employ the transmission control protocol or internet protocol, or any predecessor or successor protocol, to communicate information of all kinds by wire or radio.

(2) *"Internet access"* means a service that enables users to access content, information, electronic mail or other services over the internet. Internet access does not include telecommunication services provided by a common carrier.

(Ord. No. 87.17, § 1, 4-23-87; Ord. No. 93.37, 10-14-93; Ord. No. 96.41, 10-24-96; Ord. No. 99.40, 12-16-99; Ord. No. 2000.37, 9-14-00; Ord. No. 2007.20, 4-19-07; Ord. No. 2010.20, 6-24-10; Ord. No. O2014.21, 5-22-14)

Sec. 16-475. Transporting for hire.

The tax rate shall be at an amount equal to one and eight-tenths percent (1.8%) of the gross income from the business activity upon every person engaging or continuing in the business of providing the following forms of transportation for hire from this City to another point within the State:

(a) Transporting of persons or property by railroad; provided, however, that the tax imposed by this subsection shall not apply to transporting freight or property for hire by a railroad operating exclusively in this State if the transportation comprises a portion of a single shipment of freight or property, involving more than one railroad, either from a point in this State to a point outside this State or from a point outside this State to a point in this State. For purposes of this paragraph, "a single shipment" means the transportation that begins at the point at which one of the railroads first takes possession of the freight or property and continues until the point at which one of the railroads relinquishes possession of the freight or property to a party other than one of the railroads.

(b) Transporting of oil or natural or artificial gas through pipe or conduit.

(c) Transporting of property by aircraft.

(d) Reserved.

(1) Reserved.

(2) Reserved.

(3) Reserved.

(4) Reserved.

(e) Reserved.

(f) *Deductions or exemptions.* The gross proceeds of sales or gross income derived from the following sources is exempt from the tax imposed by this Section:

(1) Income that is specifically included as the gross income of a business activity upon which another section of Article IV imposes a tax, that is separately stated to the customer and is taxable to the person engaged in that classification not to exceed consideration paid to the person conducting the activity.

(2) Income from arranging amusement or transportation when the amusement or transportation is conducted by another person not to exceed consideration paid to the amusement or transportation business.

(g) The tax imposed by this Section shall not include arranging transportation as a convenience to a person's customers if that person is not otherwise engaged in the business of transporting persons, freight or property for hire. This exception does not apply to businesses that dispatch vehicles pursuant to customer orders and send the billings and receive the payments associated with that activity, including when the transportation is performed by third party independent contractors. For the purposes of this paragraph, "arranging" includes billing for or collecting transportation charges from a person's customers on behalf of the persons providing the transportation.
(Ord. No. 87.17, § 1, 4-23-87; Ord. No. 93.37, 10-14-93; Ord. No. 96.41, 10-24-96; Ord. No. 99.40, 12-16-99; Ord. No. 2000.37, 9-14-00; Ord. No. 2007.20, 4-19-07; Ord. No. 2010.20, 6-24-10; Ord. No. O2014.21, 5-22-14)

Sec. 16-480. Utility services

(a) The tax rate shall be at an amount equal to one and eight-tenths percent (1.8%) of the gross income from the business activity upon every person engaging or continuing in the business of producing, providing, or furnishing utility services, including electricity, electric lights, current, power, gas (natural or artificial), or water, to:

(1) Consumers or ratepayers who reside within the City.

(2) Consumers or ratepayers of this City, whether within the City or without, to the extent that this City provides such persons utility services, excluding consumers or ratepayers who are residents of another city or town which levies an equivalent excise tax upon this City for providing such utility services to such persons.

(b) *Exclusion of certain sales of natural gas to a public utility.* Notwithstanding the provisions of subsection (a) above, the gross income derived from the sale of natural gas to a public utility for the purpose of generation of power to be transferred by the utility to its ratepayers shall be considered a retail sale of tangible personal property subject to Sections 16-460 and 16-465, and not considered gross income taxable under this Section.

(c) *Resale utility services.* Sales of utility services to another provider of the same utility services for the purpose of providing such utility services either to another properly licensed utility provider or directly to such purchaser's customers or ratepayers shall be exempt and the deductible from the gross income subject to the tax imposed by this Section, provided that the purchaser is properly licensed by all applicable taxing jurisdictions to engage or continue in the business of providing utility services, and further provided that the seller maintains proper documentation, in a manner similar to that for sales for resale, of such transactions.

(d) Reserved.

(e) The tax imposed by this Section shall not apply to sales of utility services to a qualifying hospital, qualifying community health center or a qualifying health care organization,

except when sold for use in activities resulting in gross income from unrelated business income as that term is defined in 26 U.S.C. Section 512.

(f) The tax imposed by this Section shall not apply to sales of natural gas or liquefied petroleum gas used to propel a motor vehicle.

(g) The tax imposed by this Section shall not apply to:

(1) Revenues received by a municipally owned utility in the form of fees charged to persons constructing residential, commercial or industrial developments or connecting residential, commercial or industrial developments to a municipal utility system or systems if the fees are segregated and used only for capital expansion, system enlargement or debt service of the utility system or systems.

(2) Revenues received by any person or persons owning a utility system in the form of reimbursement or contribution compensation for property and equipment installed to provide utility access to, on or across the land of an actual utility consumer if the property and equipment become the property of the utility. This exclusion shall not exceed the value of such property and equipment.

(h) The tax imposed by this Section shall not apply to sales of alternative fuel as defined in A.R.S. Section 1-215, to a used oil fuel burner who has received a Department of Environmental Quality permit to burn used oil or used oil fuel under A.R.S. Section 49-426 or Section 49-480.

(i) The tax imposed by this Section shall not apply to sales or other transfers of renewable energy credits or any other unit created to track energy derived from renewable energy resources. For the purposes of this paragraph, "renewable energy credit" means a unit created administratively by the corporation commission or governing body of a public power utility to track kilowatt hours of electricity derived from a renewable energy resource or the kilowatt hour equivalent of conventional energy resources displaced by distributed renewable energy resources.

(j) The tax imposed by this Section shall not apply to the portion of gross proceeds of sales or gross income attributable to transfers of electricity by any retail electric customer owning a solar photovoltaic energy generating system to an electric distribution system, if the electricity transferred is generated by the customer's system.
(Ord. No. 87.17, § 1, 4-23-87; Ord. No. 88.32, § 1(13), 4-28-88; Ord. No. 90.16, 3-29-90; Ord. No. 93.37, 10-14-93; Ord. No. 96.41, 10-24-96; Ord. No. 96.43, 12-12-96; Ord. No. 98.37, 06-25-98; Ord. No. 2000.37, 9-14-00; Ord. No. 2010.20, 6-24-10; Ord. No. O2014.01, 1-9-14; Ord. No. O2014.21, 5-22-14)

Sec. 16-485. Wastewater removal services.

(a) The tax rate shall be an amount equal to zero percent (0.0%) of the gross income from the business activity upon every person engaging or continuing in the business of providing wastewater removal services by means of sewer lines or similar pipelines to:

(1) Consumers or ratepayers who reside within the City.

(2) Consumers or ratepayers of this City, whether within the City or without, to the extent that this City provides such persons wastewater removal services, excluding consumers or ratepayers who are residents of another city or town which levies an equivalent excise tax upon this City for providing such wastewater removal services to such persons.

(b) The tax imposed by this Section shall not apply to gross income relating to the providing of wastewater removal services from a qualifying hospital, qualifying community health center or a qualifying health care organization.
(Ord. No. 90.25, 7-12-90; Ord. No. O2014.01, 1-9-14)

ARTICLE V. ADMINISTRATION

Sec. 16-500. Administration of this chapter; rule making.

(a) The administration of this Chapter is vested in the Tax Collector, except as otherwise specifically provided, and all payments shall be made to the Tax Collector.

(b) The Tax Collector shall prescribe the forms and procedures necessary for the administration of the taxes imposed by this Chapter.

(c) Except as provided in this Section, no rule or regulation shall be adopted until approved by formal action of the City Council.

(d) Reserved.

(e) The Unified Audit Committee shall publish uniform guidelines that interpret the Model City Tax Code and that apply to all cities and towns that have adopted the Model City Tax Code as provided by A.R.S. Section 42-6005.

(1) Prior to finalization of uniform guidelines that interpret the Model City Tax Code, the Unified Audit Committee shall disseminate draft guidelines for public comment.

(2) Pursuant to A.R.S. Section 42-6005(D), when the state statutes and the Model City Tax Code are the same and where the Arizona Department of Revenue has issued written guidance, the department's interpretation is binding on cities and towns.

(Ord. No. 87.17, § 1, 4-23-87; Ord. No. 96.43, 12-12-96; Ord. No. 2007.20, 4-19-07)

Sec. 16-510. Divulging of information prohibited; exceptions allowing disclosure.

(a) Except as specifically provided, it shall be unlawful for any official or employee of the City to make known information obtained pursuant to this Chapter concerning the business financial affairs or operations of any person.

(b) The City Council may authorize an examination of any return or audit of a specific taxpayer made pursuant to this Chapter by authorized agents of the Federal Government, the State of Arizona, or any political subdivisions.

(c) The Tax Collector may provide to an Arizona county, city, or town any information concerning any taxes imposed in this Chapter relative to the taxing ordinances of that county, city, or town.

(d) Successors, receivers, trustees, personal representatives, executors, guardians, administrators, and assignees, if directly interested, may be given information by the Tax Collector as to the items included in the measure and amounts of any unpaid tax, interest, and penalties required to be paid.

(e) Upon a written direction by the City Attorney or other legal advisor to the City designated by the City Council, officials or employees of the City may divulge the amount and source of income, profits, leases, or expenditures disclosed in any return or report, and the amount of such delinquent and unpaid tax, penalty, or interest, to a private collection agency having a written collection agreement with the city.

(f) The Tax Collector shall provide information to appropriate representatives of any Arizona city or town to comply with the provisions of A.R.S. Section 42-6003, A.R.S. Section 42-6005, and A.R.S. Section 42-6056.

(g) The Tax Collector may provide information to authorized agents of any other Arizona governmental agency involving the allocation of taxes imposed by Section 16-435 upon publishing and distribution of periodicals.

(h) The Tax Collector may provide information regarding the enforcement and collection of taxes imposed by this Chapter to any governmental agency with which the City has an agreement.
(Ord. No. 87.17, § 1, 4-23-87; Ord. No. 2001.16, 7-26-01)

Sec. 16-515. Duties of the taxpayer problem resolution officer.

(a) The Taxpayer Problem Resolution Officer shall assist taxpayers in:

(1) Obtaining easily understandable tax information and information on audits, corrections and appeals procedures of the City.

(2) Answering questions regarding preparing and filing the returns required under this Chapter.

(3) Locating documents filed with or payments submitted to the Tax Collector by the taxpayer.

(b) The Taxpayer Problem Resolution Officer shall also:

(1) Receive and evaluate complaints of improper, abusive or inefficient service by the Tax Collector or any of his designees, employees, or agents and recommend to the City Manager or, for a City without a City Manager, the Chief Administrative Officer appropriate action to correct such service.

(2) Identify policies and practices of the Tax Collector or any of his designees, employees, or agents that might be barriers to the equitable treatment of taxpayers and recommend alternatives to the City Manager or, for a City without a City Manager, the Chief Administrative Officer.

(3) Provide expeditious service to taxpayers whose problems are not resolved through normal channels.

(4) Negotiate with the Tax Collector, his designees, employees, or agents to resolve the most complex and sensitive taxpayer problems.

(5) Take action to stop or prohibit the Tax Collector from taking an action against a taxpayer.

(6) Participate and present taxpayers' interests and concerns in meetings formulating the City's policies and procedures under and interpretation of this Chapter.

(7) Compile data each year on the number and type of taxpayer complaints and evaluate the actions taken to resolve those complaints.

(8) Survey taxpayers each year to obtain their evaluation of the quality of service provided by the Tax Collector, his designees, employees, and agents.

(9) Perform other functions which relate to taxpayer assistance as prescribed by the City Manager or, for a City without a City Manager, the Chief Administrative Officer.

(c) Actions taken by the Taxpayer Problem Resolution Officer may be reviewed and/or modified only by the City Manager or, for a City without a City Manager, the Chief Administrative Officer upon request of the Tax Collector or a taxpayer.

(d) The Mayor and Council of the City shall be provided with a report quarterly which identifies:

(1) Any complaints of improper, abusive or inefficient service received by the Taxpayer Problem Resolution Officer since the date of the last report.

(2) Any recommendations made, action taken or surveys obtained by the Taxpayer Problem Resolution Officer pursuant to subsection (b)(1)-(9), above, since the date of the last report.

(Ord. No. 96.42, 12-12-96)

Sec. 16-516. Taxpayer assistance orders.

(a) The Taxpayer Problem Resolution Officer, with or without a formal written request from a taxpayer, may issue a taxpayer assistance order that suspends or stays an action or proposed action by the Tax Collector if, in the Problem Resolution Officer's determination, a taxpayer is suffering or will suffer a significant hardship due to the manner in which the Tax Collector is administering the tax laws.

(b) A taxpayer assistance order may require the Tax Collector to release any lien perfected under this Chapter, or cease any action or refrain from taking any action to enforce against the taxpayer any Section of this Chapter pending resolution of the issue giving rise to the taxpayer assistance order.

(c) The Taxpayer Problem Resolution Officer, City Manager or, for a City without a City Manager, the Chief Administrative Officer may modify, reverse or rescind a taxpayer assistance order. A taxpayer assistance order is binding on the Tax Collector until it is reversed or rescinded.

(d) The running of the applicable statute of limitations for any action that is the subject of a taxpayer assistance order is suspended from the date the taxpayer applies for the order or the date the order is issued, whichever is earlier, until the order's expiration date, modification date or recision date, if any. Interest that would otherwise accrue on an outstanding tax obligation is not affected by the issuance of a taxpayer assistance order.

(e) A taxpayer assistance order may not be used:

(1) To contest the merits of a tax liability.

(2) To substitute for informal protest procedures or administrative or judicial proceedings to review a deficiency assessment, collection action or denial of a refund claim.

(Ord. No. 96.42, 12-12-96)

Sec. 16-517. Basis for evaluating employee performance.

(a) The Tax Collector shall solicit evaluations from taxpayers and include such evaluations in the performance appraisals of his employees, where applicable.

(b) The Tax Collector shall not evaluate an employee on the basis of taxes assessed or collected by that employee.

(Ord. No. 96.42, 12-12-96)

Sec. 16-520. Reporting and payment of tax.

(a) *Returns.* The returns required under this Chapter shall be made upon forms prescribed or approved by the Tax Collector, and shall be considered filed only when the accuracy of the return has been attested to, by signature upon the form, by an authorized agent of the taxpayer, and when such form has been received by the Tax Collector.

(b) *Payment.* If payment is made in any form other than United States legal tender, the tax obligation shall not be satisfied until the payment has been honored in funds.

(c) *Requirement of security.* If a taxpayer has remitted payment in the form of a check or other form of draw upon a bank or third party and such remittance has not been honored in funds, the Tax Collector may demand security for future pay rents.

(d) *Method of reporting.* Each taxpayer shall elect to report on either a cash receipts basis or an accrual basis and shall indicate the choice on the Privilege License application. A taxpayer shall not change his reporting method without receiving prior written approval by the Tax Collector.

(1) Taxpayers must report all gross income subject to the tax using the same basis of reporting.

(2) Taxes imposed upon construction contracting shall be reported as follows:

(A) Construction contractors shall report on either a progressive billing ("accrual") basis or cash receipts basis.

(B) Speculative builders shall report the gross income derived from sale of improved real property at close of escrow or at transfer of title or possession, whichever occurs earlier.

(C) Owner-builders who are not speculative builders shall report taxable amounts as provided in Section 16-417.

(Ord. No. 87.17, § 1, 4-23-87)

Sec. 16-530. When tax due; when delinquent; verification of return; extensions.

(a) Except as provided elsewhere in this Section, the taxes shall be due and payable monthly on or before the twentieth (20th) day of the month next succeeding the month in which the tax accrues.

(1) *Quarterly returns*. The Tax Collector may authorize a taxpayer whose reporting history indicates an estimated annual City Privilege and Use Tax liability on taxable gross income in excess of five thousand dollars ($5,000) but less than fifty thousand dollars ($50,000) to file returns on a calendar-quarterly basis. The taxes for each calendar quarter shall be due and payable on or before the twentieth (20th) day of the month next succeeding the end of each calendar quarter.

(2) *Annual returns*. The Tax Collector may authorize a taxpayer whose reporting history indicates an estimated annual City Privilege and Use Tax liability on taxable gross income of not more than five thousand dollars ($5,000) to file returns for such taxes on a calendar-annual basis. The taxes for each calendar year shall be due and payable on or before the twentieth (20th) day of January of the following year.

(b) *Special requirements of taxpayers filing quarterly or annual returns.* No taxpayer may report a quarterly or annual basis until he has established, to the Tax Collectors satisfaction, six (6) months reporting history. It is the taxpayer's responsibility to notify the Tax Collector and increase his reporting frequency (to quarterly or monthly as applicable) when his taxable income or tax due exceeds the maximum limits for his current reporting frequency. Failure to do so may be deemed negligence or evasion, and penalties apply. Failure to file returns timely, without good cause shown to the satisfaction of the Tax Collector, is sufficient cause for the Tax Collector to deny future filings by the taxpayer on a quarterly or annual basis.

(c) *Delinquency date.* Except as provided in subsection (d) below, all returns and remittances received within the Tax Collector's office on or before the last business day of the month when due shall be regarded as timely filed. The start of business of the first business day following the month when due shall be the delinquency date. It shall be the taxpayer's responsibility to cause his return and remittance to be timely received. Mailing the return or remittance on or before the due date or delinquency date does not relieve the taxpayer of the responsibility of causing his return or remittance to be received by the last business day of the month when due.

(d) *Jeopardy reporting*. If the Tax Collector determines that the collection of any tax due to the City is in jeopardy, the Tax Collector may direct the taxpayer to file his return and remit the tax on a weekly, daily, or transaction-by-transaction basis. Such return and remittance shall be due upon the date fixed by the Tax Collector, and the "delinquency date" shall be the following day.

(e) *Extensions.* The Tax Collector may extend the time for filing a return, for good cause shown, and only when requested in writing and received by the Tax Collector prior to the tax due date. However, the time for filing such return shall not be extended beyond the last business day of the month next succeeding the due date of such return. In such cases, only the penalties for late filing and late payment may be waived by the Tax Collector for filing and payment within the extension period. Notwithstanding the granting of an extension, the interest payable for late payment of taxes shall be paid for the period commencing upon the original delinquency date and ending on the date the tax is paid. The interest may not be waived by the Tax Collector.
(Ord. No. 87.17, § 1, 4-23-87; Ord. No. 90.25, 7-12-90; Ord. No. 95.03, 1-12-95)

Sec. 16-540. Interest and civil penalties.

(a) Any taxpayer who failed to pay any of the taxes imposed by this Chapter which were due or found to be due before the delinquency date shall be subject to and shall pay interest upon such tax until paid. From and after October 1, 2005, the interest rate shall be determined in the same manner and at the same times as prescribed by Section 6621 of the United States Internal Revenue Code and compounded annually under the method described in subsection (1) below. The rate of interest for both overpayments and underpayments for all taxpayers is the federal short-term rate, determined pursuant to Section 6621(B) of the Internal Revenue Code, plus three (3) percentage points. The interest rate prior to October 1, 2005 shall be one percent (1%) per month. Said interest may be neither waived by the Tax Collector nor abated by the Hearing Officer except as it might relate to a tax abated as provided by Section 16-570.

(1) On January 1 of each year any interest outstanding as of that date that was accrued from and after October 1, 2005 is thereafter considered a part of the principal amount of the tax and accrues interest pursuant to this Section.

(2) Interest accrued prior to October 1, 2005 shall not be added to the principal.

(b) In addition to interest assessed under subsection (a) above, any taxpayer who failed to pay any of the taxes imposed by this Chapter which were due or found to be due before the delinquency date shall be subject to and shall pay any or all of the following civil penalties, in addition to any other penalties prescribed by this Chapter:

(1) A taxpayer who fails to timely file a return for a tax imposed by this Chapter shall pay a penalty of five percent (5%) of the tax for each month or fraction of a month elapsing between the delinquency date of the return and the date on which it is filed, unless the taxpayer shows that the failure to timely file is due to reasonable cause and not due to willful neglect. This penalty shall not exceed twenty-five percent (25%) of the tax due.

(2) A taxpayer who fails to pay the tax within the time prescribed shall pay a penalty of ten percent (10%) of the unpaid tax, unless the taxpayer shows that the failure to timely pay is due to reasonable cause and not due to willful neglect. If the taxpayer is also subject to a penalty under subsection (b)(1) above for the same tax period, the total penalties under subsection (b)(1) and this subsection shall not exceed twenty-five percent (25%) of the tax due.

(3) A taxpayer who fails or refuses to file a return within thirty (30) days of having received a written notice and demand from the Tax Collector shall pay a penalty of twenty-five percent (25%) of the tax, unless the taxpayer shows that the failure is due to reasonable cause and not due to willful neglect or the Tax Collector agrees to a longer time period.

(4) If the cause of a tax deficiency is determined by the Tax Collector to be due to negligence, but without regard for intent to defraud, the taxpayer shall pay a penalty of ten percent (10%) of the amount of deficiency. If the taxpayer is also subject to a penalty under subsection (b)(1) or (b)(2) above for the same tax period, the total penalties imposed under subsection (b)(1), (b)(2) and this subsection shall not exceed twenty-five percent (25%) of the tax due.

(5) If the cause of a tax deficiency is determined by the Tax Collector to be due to civil fraud or evasion of the tax, the taxpayer shall pay a penalty of fifty percent (50%) of the amount of deficiency.

(c) Penalties and interest imposed by this Section are due and payable upon notice by the Tax Collector.

(d) If, following an audit, penalties attributable to the audit period are to be assessed pursuant to subsection (b)(1) or (b)(2) above, the Tax Collector, before assessing such penalties, must take into consideration any information or explanations provided by the taxpayer as to why the return was not timely filed and/or the tax was not timely paid. If such information and/or explanations are provided by the taxpayer, and the Tax Collector nevertheless decides to assess penalties pursuant to subsection (b)(1) or (b)(2) above, then, at the time the penalties are assessed, the Tax Collector must provide the taxpayer with a detailed written explanation of the basis for the Tax Collector's determination that the information and/or explanations provided by the taxpayer did not constitute reasonable cause.

(e) The assessment of the penalties prescribed by subsections (b)(3) through (b)(5) above must be approved on a case-by-case basis by the Tax Collector prior to such assessment. In addition, any assessment which includes penalties based upon subsection (b)(3), (b)(4), or (b)(5)

above must be accompanied by a statement signed by the Tax Collector setting forth in detail the basis for the Tax Collector's determination that the penalties are warranted under the circumstances.

(f) The Tax Collector shall waive or adjust penalties imposed by subsections (b)(l) and (b)(2) above upon a finding that:

(1) In the past, the taxpayer has consistently filed and paid the taxes imposed by this Chapter in a timely manner; or

(2) The amount of the penalty is greatly disproportionate to the amount of the tax; or

(3) The failure of a taxpayer to file a return and/or pay any tax by the delinquency date was caused by any of the following circumstances which must occur prior to the delinquency date of the return or payment in question:

(A) The return was timely filed but was inadvertently forwarded to another taxing jurisdiction.

(B) Erroneous or insufficient information was furnished the taxpayer by the Tax Collector or his employee or agent.

(C) Death or serious illness of the taxpayer, member of his immediate family, or the preparer of the reports immediately prior to the due date.

(D) Unavoidable absence of the taxpayer immediately prior to the due date.

(E) Destruction, by fire or other casualty, of the taxpayer's place of business or records.

(F) Prior to the due date, the taxpayer made application for proper forms which could not be furnished in sufficient time to permit a timely filing.

(G) The taxpayer was in the process of pursuing an active protest of the tax in question in another taxing jurisdiction at the time the tax and/or return was due.

(H) The taxpayer establishes through competent evidence that the taxpayer contacted a tax advisor who is competent on the specific tax matter and, after furnishing necessary and relevant information, the taxpayer was incorrectly advised that no tax was owed and/or the filing of a return was not required.

(I) The taxpayer has never been audited by a city for the tax or on the issue in question and relied, in good faith, on a State exemption or interpretation.

(J) The taxpayer can provide some public record (court case, report in a periodical, professional journal or publication, etc.) stating that the transaction is not subject to tax.

(K) The Arizona Department of Revenue, based upon the same facts and circumstances, abated penalties for the same filing period

A taxpayer may also request a waiver or adjustment of penalty for a reason thought to be equally substantive to those reasons itemized above. All requests for waiver or adjustment of penalty must be in writing and shall contain all pertinent facts and other reliable and substantive evidence to support the request. In all cases, the burden of proof is upon the taxpayer.

(g) No request for waiver of penalty under subsection (f) above may be granted unless written request for waiver is received by the Tax Collector within forty-five (45) days following the imposition of penalty. Any taxpayer aggrieved by the refusal to grant a waiver under subsection (f) above may appeal under the provisions of Section 16-570 provided that a petition of appeal or request for an extension is submitted to the Tax Collector within forty-five (45) days of the taxpayer's receipt of notice by the city that waiver has been denied.

(h) For the purpose of this Section, "reasonable cause" shall mean that the taxpayer exercised ordinary business care and prudence, i.e., had a reasonable basis for believing that the tax did not apply to the business activity or the storage or use of the taxpayer's tangible personal property in this City.

(i) For the purpose of this Section, "negligence" shall be characterized chiefly by inadvertence, thoughtlessness, inattention, or the like, rather than an "honest mistake". Examples of negligence include:

(1) The taxpayer's failure to maintain records in accordance with Article III of this Chapter;

(2) Repeated failures to timely file returns; or

(3) Gross ignorance of the law.

(Ord. No. 87.17, § 1, 4-23-87; Ord. No. 88.32, § 1(14), 4-28-88; Ord. No. 90.16, 3-29-90; Ord. No. 96.42, 12-12-96; Ord. No. 2007.20, 4-19-07)

Sec. 16-541. Erroneous advice or misleading statements by the tax collector; abatement of penalties and interest; definition.

(a) Notwithstanding Section 16-540(a), no interest or penalty may be assessed on an amount assessed as a deficiency if either:

(1) The deficiency assessed is directly attributable to erroneous written advice furnished to the taxpayer by an employee of the City acting in an official capacity in response to a specific request from the taxpayer and not from the taxpayer's failure to provide adequate or accurate information.

(2) All of the following are true:

(A) A tax return form prepared by the Tax Collector contains a statement that, if followed by a taxpayer, would cause the taxpayer to misapply this Chapter.

(B) The taxpayer reasonably relies on the statement.

(C) The taxpayer's underpayment directly results from this reliance.

(b) Each employee of the Tax Collector, at the time any oral advice is given to any person, shall inform the person that the Tax Collector is not bound by such oral advice.

(c) For purposes of this Section "tax return form" includes the instructions that the Tax Collector prepares for use with the tax return form.
(Ord. No. 96.42, 12-12-96)

Sec. 16-542. Prospective application of new law or interpretation or application of law.

(a) Unless expressly authorized by law, the Tax Collector shall not apply any newly enacted legislation retroactively or in a manner that will penalize a taxpayer for complying with prior law.

(b) If the Tax Collector adopts a new interpretation or application of any provision of this Chapter or determines that any provision applies to a new or additional category or type of business and the change in interpretation or application is not due to a change in the law:

(1) The change in interpretation or application applies prospectively only unless it is favorable to taxpayers.

(2) The Tax Collector shall not assess any tax, penalty or interest retroactively based on the change in interpretation or application.

(c) For purposes of subsection (b), "new interpretation or application" includes policies and procedures which differ from established interpretations of this Chapter.

(d) Reserved.
(Ord. No. 2007.20, 4-19-07)

Sec. 16-545. Deficiencies; when inaccurate return is filed; when no return is filed; estimates.

(a) If the taxpayer has failed to file a return, or if the Tax Collector is not satisfied with the return and payment of the amount of tax required, and additional taxes are determined by the Tax Collector to be due, the Tax Collector shall deliver written notice of his determination of a deficiency to the taxpayer, and such deficiency, plus penalties and interest, shall be due and payable forty-five (45) days after receipt of the notice and demand. Such additional taxes shall

bear any applicable civil penalties and interest as provided in Section 16-540, and every such notice of a determination of an additional amount due shall be assessed within the limitation period provided in Section 16-550.

(1) *When a return is filed.* If the Tax Collector is not satisfied with a return and payment of the amount of tax required by this Chapter to be paid to the City, he may examine the return or examine the records of the taxpayer, and redetermine the amount of tax, penalties, and interest required to be paid, for any periods available to the Tax Collector under Section 16-550, based upon the information contained in the return or records or based upon any information within his possession or which comes into his possession.

(2) *When no return is filed.* If any person fails to make a return, the Tax Collector may make an estimate of the amount of tax due under this Chapter and compute any applicable penalties and interest due, based upon any information within his possession or which comes into his possession.

(b) *Estimates by the Tax Collector.* Any estimate made by the Tax Collector is to be made on a reasonable basis. The existence of another reasonable basis of estimation does not, in any way, invalidate the Tax Collector's estimate. It is the responsibility of the taxpayer to prove that the Tax Collector's estimate is not reasonable and correct, by providing sufficient documentation of the type and form required by this Chapter or satisfactory to the Tax Collector. (Ord. No. 87.17, § 1, 4-23-87)

Sec. 16-546. Closing agreements in cases of extensive taxpayer misunderstanding or misapplication; city attorney approval; rules.

(a) If the Tax Collector determines that noncompliance with tax obligations results from extensive misunderstanding or misapplication of provisions of this Chapter it may enter into closing agreements with those taxpayers under the following terms and conditions:

(1) Extensive misunderstanding or misapplication of the tax laws occurs if the Tax Collector determines that more than sixty percent (60%) of the persons in the affected class have failed to properly account for their taxes owing to the same misunderstanding or misapplication of the tax laws.

(2) The Tax Collector shall publicly declare the nature of the possible misapplication and the proposed definition of the class of affected taxpayers and shall conduct a public hearing to hear testimony regarding the extent of the misapplication and the definition of the affected class.

(3) If, after the public hearing, the Tax Collector determines that a class of affected taxpayers has failed to comply with their tax obligations because of extensive misunderstanding or misapplication of the tax laws it shall issue a tax ruling announcing that finding and publish the ruling in a newspaper of general circulation in the City and through the next two model city tax code Tempe updates.

(4) A closing agreement under this Section may abate some or all of the penalties, interest and tax that taxpayers have failed to remit, or the agreement may provide for the prospective treatment of the matter as to the class of affected taxpayers. All taxpayers in the class shall be offered the opportunity to enter into a similar agreement for the same tax periods.

(5) Taxpayers in the affected class who have properly accounted for their tax obligations for these tax periods shall be offered the opportunity to enter into an equivalent closing agreement providing for a pro rata credit or refund of their taxes previously paid.

(6) The closing agreement shall require the taxpayers to properly account for and pay such taxes in the future. If a taxpayer fails to adhere to such a requirement, the closing agreement is voidable by the Tax Collector and he may assess the taxpayer for the delinquent taxes. The Tax Collector may issue such a proposed assessment within six (6) months after the date that he declares that closing agreement void or within the period prescribed by Section 16-550 of this Chapter.

(b) Before entering into closing agreements pursuant to this Section, the Tax Collector shall secure such approval as required by charter, ordinance or administrative regulation.

(c) After a closing agreement has been signed pursuant to this Section, it is final and conclusive except on a showing of fraud, malfeasance or misrepresentation of a material fact. The case shall not be reopened as to the matters agreed upon or the agreement shall not be modified by any officer, employee or agent of the City. The agreement or any determination, assessment, collection, payment abatement, refund or credit made pursuant to the agreement shall not be annulled, modified, set aside or disregarded in any suit, action or proceeding.

(d) The Tax Collector shall report in writing its activities under this Section to the Mayor and City Council on or before February 1 of each year.
(Ord. No. 96.42, 12-12-96)

Sec. 16-550. Limitation periods.

(a) *Limitation when a return has been filed.*

(1) Except as provided elsewhere in this Section, the Tax Collector may assess additional tax due at any time within four (4) years after the date on which the return is required to be filed, or within four (4) years after the date on which the return is filed, whichever period expires later.

(2) However, if a taxpayer does not report an amount properly reportable which is in excess of twenty-five percent (25%) of the taxable amount stated on the return, the Tax Collector may assess additional tax due at any time within six (6) years after the date on which the return was filed.

(3) Any delay in commencement or completion of any examination by the Tax Collector, which is requested or agreed to in writing by the taxpayer, shall be excluded from the computation of any limitation period prescribed by this Section, and the Tax Collector shall be entitled to make a determination for taxes due without exclusion of any such time period, and any limitation period shall be extended for a length of time equivalent to the period of the agreed upon delay.

(4) Any assessment of additional tax due by the Tax Collector shall be deemed to have been made by mailing a copy of a notice of audit assessment by certified mail to the taxpayer's address of record with the Tax Collector or by personal delivery of a copy of a notice of audit assessment to the taxpayer or his authorized agent.

(b) *Suspension of limitation period.* The limitation period on assessment shall be suspended for any period:

(1) The assets of the taxpayer are in the control or custody of the court in any proceeding before any court of jurisdiction within the United States of America, and for one hundred and eighty (180) calendar days thereafter; or

(2) Which the taxpayer and the Tax Collector agree upon in writing.

(c) *When no return filed; fraudulent return.* In the case of a fraudulent return with the intent to evade tax, or the failure or refusal to file a return for any month, the Tax Collector may assess the amount of taxes payable for that month at any time, without any reliance by the taxpayer upon any time limitation provided elsewhere in this Chapter.

(d) *Special provisions relating to owner-builders.* The limitation for an owner-builder subject to the tax as prescribed in Section 16-417 shall be based upon the date such tax liability is reportable or was reported, as provided in Section 16-417.
(Ord. No. 87.17, § 1, 4-23-87; Ord. No. 90.25, 7-12-90; Ord. No. 96.42, 12-12-96)

Sec. 16-553. Examination of taxpayer records; joint audits.

(a) *Waiver of joint audit.* A taxpayer that does not authorize a joint audit to be conducted for a tax jurisdiction is subject to audit by that tax jurisdiction at any time subject to the limitation provisions provided in Section 16-550.

(b) *Tax jurisdiction acceptance of joint audit.* If the Arizona Department of Revenue intends to conduct an audit of a taxpayer, the cities or towns for whom a joint audit is being conducted may accept the audit by the Arizona Department of Revenue or may elect to have a representative participate, provided that no more than two (2) city or town representatives in total may participate.

(1) If a city or town does not accept the audit as a joint audit, the city or town may not conduct an audit of the taxpayer for forty-two (42) months from the close of the last tax period covered by the audit unless an exception applies to that taxpayer pursuant to A.R.S. Section 42-2059.

(2) If a joint audit is performed by a city or town, the Arizona Department of Revenue is not prohibited from conducting an audit that does not violate the provisions of A.R.S. Section 42-2059.

(Ord. No. 2001.16, 7-26-01)

Sec. 16-555. Tax collector may examine books and other records; failure to provide records.

(a) The Tax Collector may require the taxpayer to provide and may examine any books, records, or other documents of any person who, in the opinion of the Tax Collector, might be liable for any tax under this Chapter, for any periods available to him under Section 16-550.

(b) In order to perform any examination authorized by this Chapter, the Tax Collector may issue an administrative request for the attendance of witnesses or for the production of documents, as provided by Regulation.

(c) If within sixty (60) days of receiving a written request for information in the possession of the taxpayer, the taxpayer fails or refuses to furnish the requested information, the Tax Collector may, in addition to penalties prescribed under Section 16-540, impose an additional penalty of twenty-five percent (25%) of the amount of any tax deficiency which is attributable to the information which the taxpayer failed to provide, unless the taxpayer shows that the failure was due to reasonable cause and not due to willful neglect.

(d) The Tax Collector may use any generally accepted auditing procedures, including sampling techniques, to determine the correct tax liability of any taxpayer. The Tax Collector shall ensure that the procedures used are in accordance with generally accepted auditing standards.

(e) The fact that the taxpayer has not maintained or provided such books and records which the Tax Collector considers necessary to determine the tax liability of any person does not preclude the Tax Collector from making any assessment. In such cases, the Tax Collector is authorized to use estimates, projections, or samplings, to determine the correct tax. The provisions of Section 16-545(b), concerning estimates, shall apply.

(f) The Tax Collector shall give the taxpayer written notice of his determination of a deficiency by certified mail to the taxpayer's address of record with the Tax Collector, and the tax deficiency, plus interest and penalties, is final forty-five (45) days from the date of receipt of the notice by the taxpayer, unless an appeal is taken pursuant to the provisions of Sections 16-570 through 16-575.

(Ord. No. 87.17, § 1, 4-23-87; Ord. No. 95.03, 1-12-95; Ord. No. 96.42, 12-12-96)

Sec. 16-556. No additional audits or proposed assessments; exceptions.

(a) Once the Tax Collector completes an examination authorized by Section 16-555 and a written notice of the determination of a deficiency has been issued to the taxpayer pursuant to Section 16-545(a) or Section 16-555(f), the taxpayer's liability for the time period subjected to the examination is fixed and determined, and no additional audit or examination may be conducted by the Tax Collector with respect to such time period except under the following circumstances:

(1) If a taxpayer files a claim for refund under Section 16-560, the Tax Collector may conduct an examination limited to the issues presented in the refund claim.

(2) If the taxpayer failed to disclose material information during the initial examination, falsified books or records, or otherwise engaged in conduct which prevented the Tax Collector from conducting an accurate examination. The applicability of this subsection, and the Tax Collector's right to proceed thereunder, may be raised and contested by the taxpayer in a subsequent administrative review brought pursuant to Section 16-570.

(b) An audit or examination conducted by any other taxing jurisdiction will not preclude the Tax Collector from conducting an audit or examination for the same time period.

(c) If the Tax Collector issues a notice of deficiency pursuant to either Section 16-545(a) or Section 16-555(f), the Tax Collector may not increase the proposed deficiency except in one or more of the following circumstances:

(1) The taxpayer made a material misrepresentation of fact.

(2) The taxpayer failed to disclose a material fact.

(3) The Tax Collector submitted a written request for information prior to issuance of the assessment, and the taxpayer, despite possessing or having access to such information, failed to provide it within sixty (60) days as required by Section 16-555(c).

(4) After issuing the notice of determination of deficiency but before the deficiency became final, the Arizona Tax Court, Court of Appeals or Supreme Court issued a decision, the applicability of which causes the deficiency initially proposed to increase.

(Ord. No. 96.42, 12-12-96; Ord. No. 98.37, 06-25-98)

Sec. 16-560. Erroneous payment of tax; credits and refunds; limitations.

(a) The Tax Collector may authorize either credits or payments of refunds for any taxes, penalties or interest paid in excess of the amount actually due. Any credit authorized by the Tax Collector shall be canceled from the accounts of the City if no timely filed request for credit or refund is made by the claimant claiming same within one (1) year following the date of determination and notice by the Tax Collector of the excess payment. For purposes of this Section, "claimant" means a taxpayer that has paid a tax imposed under this article and has submitted a credit or refund claim under this Section. Except where the taxpayer has granted a customer a power of attorney to pursue a credit or refund claim on the taxpayer’s behalf, claimant does not include any customer of such taxpayer, whether or not the claimant collected the tax from customers by separately stated itemization.

(b) No credit shall be allowed or refund paid except under one of the following conditions:

(1) As provided in Section 16-565.

(2) Upon examination of filed returns for any period not excluded by Section 16-550, and not to exceed the tax, penalty, or interest actually paid with such returns.

(3) Upon audit or other examination of the books and records of the taxpayer, but only for periods as provided in Section 16-550. In the case of an examination performed at the taxpayer's request, credit shall be allowed or refund paid only for any excess taxes, penalties, or interest actually paid within the limitation period provided in Section 16-550, such period to be calculated from the date of receipt of the taxpayer's request by the Tax Collector. Requests by taxpayers for audits to authorize credits shall be honored unless, in the opinion of the Tax Collector, the taxpayer has made excessive requests for audits.

(4) Upon the claimant's submission of a written claim for credit or refund of any taxes, penalties, or interest paid to the City by the claimant.

(c) A credit or refund claim submitted by a claimant pursuant to subsection (b)(4) of this Section must:

(1) Identify the name, address and city tax identification number of the taxpayer; and

(2) Identify the dollar amount of the credit or refund requested; and

(3) Identify the specific tax period involved; and

(4) Identify the specific grounds upon which the claim is based.

(d) When a written claim for credit or refund is submitted pursuant to subsection (b)(4) of this Section, no credit shall be allowed or refund paid except for those taxes, penalties, or interest paid in excess of the amount due within the limitation period provided in Section 16-550. The credit or refund limitation period shall be calculated from the date the Tax Collector receives the claimant’s written claim meeting the requirements of subsection (c) of this Section.

(e) The following additional requirements apply to the Tax Collector and the claimant for claims for credit or refund submitted pursuant to subsection (b)(4) of this Section:

(1) The Tax Collector shall notify the claimant that the claim for credit or refund has been received and shall indicate whether the claim meets the requirements of subsection (c) of this Section. If the claim does not meet the requirements of subsection (c) of this Section, the Tax Collector shall identify the deficiency in writing. Any claim that does not meet the requirements of subsection (c) of this Section shall not secure the limitation period pursuant to Section 16-550.

(2) The Tax Collector may request, in writing, additional information or documentation from the claimant to support the requested credit or refund. Such information or documentation must be reasonably related to the claim and required to be maintained under this chapter in the normal course of business.

(A) The claimant may request in writing one or more extensions to supply the requested information or documentation. The Tax Collector may reject an extension request only by denying the claim in whole or in part, subject to appeal by the claimant pursuant to Section 16-570.

(B) A claimant aggrieved by a request for information or documentation under this subsection may file an appeal in the manner provided for in Section 16-570 regarding the scope of the request for information or documentation. Such petition must be filed no later than the last day by which requested information or documentation must be provided to the Tax Collector, including any extensions. The decision of the Hearing Officer regarding a request for information or documentation may not be appealed by either party until the claim has been approved or denied, in whole or in part, under subsection (h) of this Section or through subsubsections (e)(3) or (e)(4) of this Section. A claimant shall not be barred from raising the issue of the reasonableness of the Tax Collector's information or documentation request in an appeal filed under subsection (h) of this Section or through subsubsections (e)(3) or (e)(4) of this Section through a lack of filing a petition under this subsubsection.

(3) If the Tax Collector fails to request additional information or documentation pursuant to this Section and fails to issue a determination on any claim for credit or refund within six (6) months after the claim is filed, the claimant may consider the claim denied and may file an appeal pursuant to Section 16-570.

(4) If the Tax Collector fails to issue a determination within six (6) months of receiving all requested additional information or documentation, the claimant may consider the claim for credit or refund denied and may file an appeal pursuant to Section 16-570.

(5) The burden of proof to show that a notice, request, determination or other communication was received by the claimant in this Section is on the Tax Collector, and will be satisfied by receipt of notice. The burden of proof to show that a claim or additional information or documentation was received by the Tax Collector is on the claimant and will be satisfied by receipt of notice.

(f) Interest shall be allowed on the overpayment of tax for any credit or refund authorized pursuant to subsections (b)(3) or (b)(4) of this Section at the rate and in the manner set forth in Section 16-540(a) as follows:

(1) For credits or refunds authorized pursuant to subsection (b)(3) of this Section, interest shall be calculated from the date the Tax Collector receives the claimant's written claim following the date of notice to the claimant authorizing the credit or refund.

(2) For credits or refunds authorized pursuant to subsection (b)(4) of this Section, interest shall be calculated from the date the Tax Collector receives the claimant's written claim meeting the requirements of subsection (c) of this Section.

(g) The Tax Collector shall give the claimant a written notice of determination for a claim made under subsection (b) of this Section. If the determination is a denial of a claim, in whole or in part, the determination must state that the claim for credit or refund has been denied in whole or in part, with the reason for denial, and must include the claimant's rights of appeal pursuant to Section 16-570.

(h) A determination by the Tax Collector under this Section, whether an approval of a claim or a denial of a claim, in whole or in part, shall become final forty-five (45) days from the date of receipt of the notice by the claimant, unless an appeal is made pursuant to Section 16-570. If the claimant is the prevailing party in an appeal of a determination under this Section, Section 16-578 shall apply, except that reasonable fees and other costs may be awarded either by the Hearing Officer or court and are not subject to the monetary limitations of subsection 16-578(e) if the Tax Collector's position was not substantially justified or was brought for the purpose of harassing the claimant, frustrating the credit or refund process or delaying the credit or refund. For the purposes of this Section, "reasonable fees and other costs" means fees and other costs that are based on prevailing market rates for the kind and quality of the furnished services, not to exceed the amounts actually paid for expert witnesses, the cost of any study, analysis, report, test, project or computer program that is found to be necessary to prepare the claimant's case and necessary fees for attorneys or other representatives.

(i) The amendments to this Section as enacted in Ordinance No. 2007.20 shall be effective as follows:

(1) For any claim for refund or credit received by the Tax Collector before October 1, 2005:

(A) The provisions of this Section as it existed prior to the adoption of Ordinance No. 2007.20 shall apply, except that interest shall be allowed from and after October 1, 2005 as provided in subsection (f) of this Section as enacted by Ordinance No. 2007.20.

(B) Except as noted in subsection (1)(a) above, the amendments to this Section as enacted in Ordinance No. 2007.20 shall not be cited or considered in the construction or the interpretation of the city tax refund or credit provisions, interest provisions, or appeal provisions in effect prior to October 1, 2005.

(2) The provisions of this Section enacted by Ordinance No. 2007.20 shall apply to all claims for refund or credit, for any periods as determined by subsections (d) or (e) of this section, received by the tax collector from and after October 1, 2005, except for claims that, in whole or in part, had been received by the tax collector prior to October 1, 2005.

(j) Any refund paid under the provisions of this Section shall be paid from the privilege tax revenue accounts.
(Ord. No. 87.17, § 1, 4-23-87; Ord. No. 96.42, 12-12-96; Ord. No. 2007.20, 4-19-07)

Sec. 16-565. Payment of tax by the incorrect taxpayer or to the incorrect Arizona city or town.

(a) When it is determined that taxes have been reported and paid to the City by the wrong taxpayer, any taxes erroneously paid shall be transferred by the City to the privilege tax account of the person who actually owes and should have paid such taxes, provided that the City receives an assignment and waiver signed by both the person who actually paid the tax and the person who should have paid the tax.

(b) An assignment and waiver provided under this Section, must:

(1) Identify the name and City privilege license number of the person who erroneously paid the tax and the person who should have paid the tax.

(2) Provide that the person who erroneously paid the tax waives any right such person may have to a refund of the taxes erroneously paid.

(3) Authorize the City to transfer the erroneously paid tax to the privilege tax account of the person who should have paid the tax.

(c) When it is determined that taxes have been reported and paid to the wrong Arizona city or town, such taxes shall be remitted to the correct city or town, provided that the city or town to whom the taxes were erroneously paid receives an assignment and waiver signed by both the person who actually paid the tax and the person who should have paid the tax. Where the person who actually paid the tax and the person who should have paid the tax are one and the same, no assignment and waiver need be provided. The City shall neither pay nor charge any interest or penalty on any overpayment or underpayment except such interest and penalty actually paid by the taxpayer relating to such tax.

(d) This Section in no way limits or restricts the applicability of any remedies which may otherwise be available under A.R.S. Section 42-6003. The limitations and procedures set forth in A.R.S. Section 42-6003 shall apply to all payments under this Section.

(e) When reference is made in this Section to this City or an Arizona city or town, and payments made to or requested from this City or an Arizona city or town, the provisions shall be applicable to the Arizona Department of Revenue when it is acting for or on behalf of this City or an Arizona city or town.
(Ord. No. 87.17, § 1, 4-23-87; Ord. No. 96.42, 12-12-96; Ord. No. 2007.20, 4-19-07)

Sec. 16-567. Reserved.
(Ord. No. 87.17, § 1, 4-23-87; Repealed by Ord. No. 96.43, 12-12-96)

Sec. 16-570. Administrative review; petition for hearing or for redetermination; finality of order.

For the purposes of this Section, "Municipal Tax Hearing Office" means the administrative offices of the Municipal Tax Hearing Officer.

(a) *Informal conference.* A taxpayer shall have the right to discuss any proposed assessment with the auditor prior to the issuance of any assessment, but any such informal conference is not required for the taxpayer to file a petition for administrative review.

(b) *Administrative review.*

(1) *Filing a petition.* Other than in the case of a jeopardy assessment, a taxpayer may contest the applicability or amount of any tax, penalty, or interest imposed upon or paid by him pursuant to this Chapter by filing a petition for a hearing or for redetermination with the Tax Collector as set forth below:

(A) Within forty-five (45) days of receipt by the taxpayer of notice of a determination by the Tax Collector that a tax, penalty, or interest amount is due, or that a request for refund or credit has been denied; or

(B) By voluntary payment of any contested amount when accompanied by a timely filed return and a petition requesting a refund of the protested portion of said payment; or

(C) By petition accompanying a timely filed return contesting an amount reported but not paid; or

(D) By petition requesting review of denial of waiver of penalty as provided in subsection 16-540(g).

(2) *Extension to file a petition.* In all cases, the taxpayer may request an extension from the Tax Collector. Such request must be in writing, state the reasons for the requested delay and must be filed with the Tax Collector within the period allowed above for originally filing a petition. The Tax Collector shall allow a forty-five (45) day extension to file a petition when such written request has been properly and timely made by the taxpayer. The Tax Collector may grant an additional extension and may determine the corresponding time of any such extension at his sole discretion.

(3) *Requirements for petition.*

(A) The petition shall be in writing and shall set forth the reasons why any correction, abatement, or refund should be granted, and the amount of reduction or refund requested. The petition may be amended at any time

prior to the time the taxpayer rests his case at the hearing or such time as the Hearing Officer allows for submitting of amendments in cases of redeterminations without hearings. The Hearing Officer may require that amendments be in writing, and in that case, he shall provide a reasonable period of time to file the amendment. The Hearing Officer shall provide a reasonable period of time for the Tax Collector to review and respond to the petition and to any written amendments.

(B) The taxpayer, as part of the petition, may request a hearing which shall be granted by the Hearing Officer. If no request for hearing is made the petition shall be considered to be submitted for decision by the Hearing Officer on the matters contained in the petition and in any reply made by the Tax Collector.

(C) The provisions of this Section are exclusive, and no petition seeking any correction, abatement, or refund shall be considered unless the petition is timely and properly filed under this Section.

(4) *Transmittal to hearing officer*. The City shall designate a Hearing Officer, who may be other than an employee of the City. The Tax Collector, if designated to receive petitions, shall forward any petition to the Municipal Tax Hearing Office (MTHO) within twenty (20) days after receipt, accompanied by documentation as to timeliness. In cases where the Hearing Officer determines that the petition is not timely or not in proper form, he shall notify both the taxpayer and the Tax Collector; and in cases of petitions not in proper form only, the Hearing Officer shall provide the taxpayer with an extension up to forty-five (45) days to correct the petition.

(5) *Hearings* shall be conducted by a Hearing Officer and shall be continuous until the Hearing Officer closes the record. The taxpayer may be heard in person or by his authorized representative at such hearing. Hearings shall be conducted informally as to the order of proceeding and presentation of evidence. The Hearing Officer shall admit evidence over hearsay objections where the offered evidence has substantial probative value and reliability. Further, copies of records and documents prepared in the ordinary course of business may be admitted, without objection as to foundation, but subject to argument as to weight, admissibility, and authenticity. Summary accounting records may be admitted subject to satisfactory proof of the reliability of the summaries. In all cases, the decision of the Hearing Officer shall be made solely upon substantial and reliable evidence. All expenses incurred in the hearing shall be paid by the party incurring the same.

(6) *Redeterminations* upon a "petition for redetermination" shall follow the same conditions, except that no oral hearing shall be held.

(7) *Hearing ruling*. In either case, the Hearing Officer shall issue his ruling not later than forty-five (45) days after the close of the record by the Hearing Officer.

(8) *Notice of refund or adjusted assessment*. Within sixty (60) days of the issuance of the Hearing Officer's decision, the Tax Collector shall issue to the taxpayer either a notice of refund or an adjusted assessment recalculated to conform to the Hearing Officer's decision.

(c) *Stipulations that future tax is also protested.* A taxpayer may enter into a stipulation with the Tax Collector that future taxes of similar nature are also at issue in any protest or appeal. However, unless such stipulation is made, it is presumed that the protest or appeal deals solely and exclusively with the tax specifically protested and no other. When a taxpayer enters into such a stipulation with the Tax Collector that future taxes of similar nature will be included in any redetermination, hearing, or court case, it is the burden of that taxpayer to identify, segregate, and keep record of such income or protested taxable amount in his books and records in the same manner as the taxpayer is required to segregate exempt income.

(d) *When an assessment is final.*

(1) If a request for administrative review and petition for hearing or redetermination of an assessment made by the Tax Collector is not filed within the period required by subsection (b) above, such person shall be deemed to have waived and abandoned the right to question the amount determined to be due and any tax, interest, or penalty determined to be due shall be final as provided in subsections 16-545(a) and 16-555(f).

(2) The decision made by the Hearing Officer upon administrative review by hearing or redetermination shall become final thirty (30) days after the taxpayer receives the notice of refund or adjusted assessment required by subsection (b)(8) above, unless the taxpayer appeals the order or decision in the manner provided in Section 16-575.

(e) Reserved.

(Ord. No. 87.17, § 1, 4-23-87; Ord. No. 90.25, 7-12-90; Ord. No. 96.42, 12-12-96; Ord. No. 2001.16, 7-26-01; Ord. No. 2010.09, 5-6-10)

Sec. 16-571. Jeopardy assessments.

(a) If the Tax Collector believes that the collection of any assessment or deficiency of any amounts imposed by this Chapter will be jeopardized by delay, he shall deliver to the taxpayer a notice of such finding and demand immediate payment of the tax or deficiency declared to be in jeopardy, including interest, penalties, and additions.

(b) Jeopardy assessments are immediately due and payable, and the Tax Collector may immediately begin proceedings for collection. The taxpayer, however, may stay collection by filing, within ten (10) days after receipt of notice of jeopardy assessment, or within such additional time as the Tax Collector may allow, by bond or collateral in favor of the City in the amount Tax Collector declared to be in jeopardy in his notice.

(c) "Bond or collateral", as required by this Section:

(1) Shall mean either:

(A) A bond issued in favor of the City by a surety company authorized to transact business in this State and approved by the Director of Insurance as to solvency and responsibility, or
(B) Collateral composed of securities or cash which are deposited with, and kept in the custody of, the Tax Collector.

(2) Shall be of such form that it may, at any time without notice, be applied to any tax, penalties, or interest due and payable for the purposes of this Chapter. Securities held as collateral by the Tax Collector must be of a nature that they may be sold at public or private sale without notice to the taxpayer.

(d) If bond or collateral is not filed within the period prescribed by subsection (b) above, the Tax Collector may treat the assessment as final for purposes of any collection proceedings. The taxpayer nevertheless shall be afforded the appeal rights provided in Sections 16-570 and 16-575. The filing of a petition by the taxpayer under Section 16-570, however, shall not stay the Tax Collector's rights to pursue any collection proceedings.

(e) If the taxpayer timely files sufficient bond or collateral, the jeopardy requirements are deemed satisfied, and the taxpayer may avail himself of the provisions of Section 16-570, including requests for additional time to file a petition.
(Ord. No. 87.17, § 1, 4-23-87; Ord. No. 88.32, § 1(15), 4-28-88)

Sec. 16-572. Expedited review of jeopardy assessments.

(a) Within thirty (30) days after the day on which the Tax Collector furnishes the written notice required by Section 16-571(a), the taxpayer, pursuant to Section 16-570, may request the Tax Collector to review the action taken. Within fifteen (15) days after the request for review, the Tax Collector shall determine whether both the jeopardy determination and the amount assessed are reasonable.

(b) Within thirty (30) days after the Tax Collector notifies the taxpayer of the determination he reached pursuant to subsection (a) above, the taxpayer may bring a civil action in the appropriate Court. If the taxpayer so requests, the City shall stipulate to an accelerated and expedited resolution of the civil action. If the Court determines that either the jeopardy determination or the amount assessed is unreasonable, the Court may order the Tax Collector to abate the assessment, to redetermine any part of the amount assessed or to take such other action as the Court finds to be appropriate. A determination made by the Court under this subsection is final except as provided in A.R.S. Section 12-170.
(Ord. No. 96.42, 12-12-96)

Sec. 16-575. Judicial review.

(a) A taxpayer may seek judicial review of all or any part of a Hearing Officer's decision by initiating an action against the City in the appropriate Court of this County. A taxpayer is not required to pay any tax, penalty, or interest upheld by the Hearing Officer before seeking such judicial review.

(b) The Tax Collector may seek judicial review of all or any part of a Hearing Officer's decision by initiating an action in the appropriate Court of this County.

(c) An action for judicial review cannot be commenced by either the taxpayer or the Tax Collector more than thirty (30) days after receipt by the taxpayer of notice of any refund or assessment recalculated or reduced to conform to the Hearing Officer's decision, unless the time to commence such an action is extended in writing signed by both the taxpayer and the Tax Collector. Failure to bring the action within thirty (30) days or such other time as is agreed upon in writing shall constitute a waiver of any right to judicial review, except as provided in subsection (f) below.

(d) The Court shall hear and determine the appeal as a trial de novo; however, the Tax Collector cannot raise in the Court any grounds or basis for the assessment not asserted before the Hearing Officer. Nothing in this subsection, however, shall preclude the Tax Collector from responding to any arguments which are raised by the taxpayer in the appeal.

(e) The City has the burden of proof by a preponderance of the evidence in any Court proceeding regarding any factual issue relevant to ascertaining the tax liability of a taxpayer. This subsection does not abrogate any requirement of this Chapter that requires a taxpayer to substantiate an item of gross income, exclusion, exemption, deduction, or credit. This subsection applies to a factual issue if a preponderance of the evidence demonstrates that:

(1) The taxpayer asserts a reasonable dispute regarding the issue.

(2) The taxpayer has fully cooperated with the Tax Collector regarding the issue, including providing within a reasonable period of time, access to and inspection of all witnesses, information and documents within the taxpayer's control, as reasonably requested by the Tax Collector.

(3) The taxpayer has kept and maintained records as required by the City.

(f) The issuance of an adjusted or corrected assessment or notice of refund due to the taxpayer, where made by the Tax Collector pursuant to the decision of the Hearing Officer, shall not be deemed an acquiescence by the City or the Tax Collector in said decision, nor shall it constitute a bar or estoppel to the institution of an action or counterclaim by the City to recover any amounts claimed to be due to it by virtue of the original assessment.

(g) After the initiation of any action in the appropriate court by either party, the opposite party may file such counterclaim as would be allowed pursuant to the Arizona Rules of Civil Procedure.

(Ord. No. 87.17, § 1, 4-23-87; Ord. No. 96.42, 12-12-96; Ord. No. 99.40, 12-16-99)

Sec. 16-577. Refunds of taxes paid under protest.

In the event the Hearing Officer's decision or a final judgment by the Court is rendered in favor of the taxpayer to recover protested taxes, it shall be the duty of the Tax Collector, upon receipt of such decision or of a certified copy of such final judgment, to authorize a warrant in favor of the taxpayer in an amount equal to the amount of the tax found by such decision or by the final judgment to have been paid under protest, and such warrant shall include the amount of interest or other cost that may have been recovered against the City by the final judgment in such action in the courts, to be paid from the Privilege Tax revenue accounts.
(Ord. No. 87.17, § 1, 4-23-87)

Sec. 16-578. Reimbursement of fees and other costs; definitions.

(a) A taxpayer who is a prevailing party may be reimbursed for reasonable fees and other costs related to any administrative proceeding brought by the taxpayer pursuant to Section 16-570(b). For purposes of this Section, a taxpayer is considered to be the prevailing party only if both of the following are true:

(1) The Tax Collector's position was not substantially justified.

(2) The taxpayer prevails as to the most significant issue or set of issues.

(b) Reimbursement under this Section may be denied if any of the following circumstances apply:

(1) During the course of the proceeding the taxpayer unduly and unreasonably protracted the final resolution of the matter.

(2) The reason that the taxpayer prevailed is due to an intervening change in the applicable law.

(c) The taxpayer shall present an itemization of the reasonable fees and other costs to the Taxpayer Problem Resolution Officer within thirty (30) days after receipt by the taxpayer of a notice of refund or recalculated assessment issued by the Tax Collector pursuant to Section 16-570(b)(8). The Taxpayer Problem Resolution Officer shall determine the validity of the fees and other costs within thirty (30) days after receiving the itemization. The Taxpayer Problem Resolution Officer's decision is considered a final decision. Either the taxpayer or the Tax Collector may seek judicial review of the Taxpayer Problem Resolution Officer's decision. An action for judicial review, however, shall not be commenced more than thirty (30) days after receipt of the Resolution Officer's decision.

(d) In the event judicial review is not sought pursuant to subsection (c) above, the City shall pay the fees and other costs awarded as provided in this Section within thirty (30) days after demand by a person who has received an award pursuant to this Section.

(e) Reimbursement to a taxpayer under this Section shall not exceed twenty thousand dollars ($20,000) or actual monies spent, whichever is less. The reimbursable attorney or representative fees shall not exceed one hundred dollars ($100) per hour or actual monies spent, whichever is less, unless the Taxpayer Problem Resolution Officer determines that an increase in the cost of living or a special factor such as the limited availability of qualified attorneys or representatives for the proceeding involved justifies a higher fee.

(f) For purposes of this Section "reasonable fees and other costs" means fees and other costs that are based on prevailing market rates for the kind and quality of the furnished services, but not exceeding the amounts actually spent for expert witnesses, the cost of any study, analysis, report, test or project that is found to be necessary to prepare the party's case and necessary fees for attorneys or other representatives.
(Ord. No. 96.42, 12-12-96)

Sec. 16-580. Criminal penalties.

(a) It is unlawful for any person to knowingly or willfully:

(1) Fail or refuse to make any return required by this Chapter.

(2) Fail to remit as and when due the full amount of any tax or additional tax or penalty and interest thereon.

(3) Make or cause to be made a false or fraudulent return.

(4) Make or cause to be made a false or fraudulent statement in a return, in written support of a return, or to demonstrate or support entitlement to a deduction, exclusion, or credit or to entitle the person to an allocation or apportionment or receipts subject to tax.

(5) Fail or refuse to permit any lawful examination of any book, account, record, or other memorandum by the Tax Collector.

(6) Fail or refuse to remit any tax collected by such person from his customer to the Tax Collector before the delinquency date next following such collection.

(7) Advertise or hold out to the public in any manner, directly or indirectly, that any tax imposed by this Chapter, as provided in this Chapter, is not considered as an element in the price to the consumer.

(8) Fail or refuse to obtain a Privilege License or to aid or abet another in any attempt to intentionally refuse to obtain such a license or evade the license fee.

(9) Reproduce, forge, falsify, fraudulently obtain or secure, or aid or abet another in any attempt to reproduce, forge, falsify, or fraudulently obtain or secure, an exemption from taxes imposed by this Chapter.

(b) The violation of any provision of subsection (a) above shall constitute a Class One Misdemeanor.

(c) In addition to the foregoing penalties, any person who shall knowingly swear to or verify any false or fraudulent statement, with the intent aforesaid, shall be guilty of the offense of perjury and on conviction thereof shall be punished in the manner provided by law.
(Ord. No. 87.17, § 1, 4-23-87)

Sec. 16-590. Civil actions.

(a) *Liens.*

(1) Any tax, penalty, or interest imposed under this Chapter which has become final, as provided in this Chapter, shall become a lien when the City perfects a notice and claim of lien setting forth the name of the taxpayer, the amount of the tax, penalty, and interest, the period or periods for which the same is due, and the date of accrual thereof, the amount of the recording costs by the county recorder in any county in which the taxpayer owns real property and the documentation and lien processing fees imposed by the City Council and further, stating that the City claims a lien therefor.

(2) The notice of claim of lien shall be signed by the Management Services Director or his designee under his official seal or the official seal of the City, and, with respect to real property, shall be recorded in the office of the county recorder of any county in which the taxpayer owns real property, and, with respect to personal property shall be filed in the office of the Secretary of State. After the notice and claim of lien is recorded or filed, the taxes, penalties, interest and recording costs and lien processing fees referred to above in the amounts specified therein shall be a lien on all real property of the taxpayer located in such county where recorded, and all tangible personal property of the taxpayer within the State, superior to all other liens and assessments recorded or filed subsequent to the recording or filing of the notice and claim of lien.

(3) Every tax and any increases, interest, penalties, and recording costs and lien processing fees referred to above, shall become from the time the same is due and payable a personal debt from the person liable to the City, but shall be payable to and recoverable by the Tax Collector and which may be collected in the manner set forth in subsection (b) below.

(4) Any lien perfected pursuant to this Section shall, upon payment of the taxes, penalties, interest, recording costs and lien processing fees referred to above and lien release fees imposed by the county recorder in any county in which the lien was recorded, thereby, be released by the Tax Collector in the same manner as mortgages and judgments are released. The Tax Collector may, at his sole discretion, release a lien in part, that is, against only specified property, for partial payment of moneys due the City.

(b) *Actions to recover tax*. An action may be brought by the City Attorney or other legal advisor to the City designated by the City Council, at the request of the Tax Collector, in the name of the City, to recover the amount of any taxes, penalties, interest, recording costs, lien processing fees and lien release fees due under this Chapter; provided that:

(1) No action or proceeding may be taken or commenced to collect any taxes levied by this Chapter until the amount thereof has been established by assessment, correction, or reassessment; and

(2) Such collection effort is made or the proceedings begun:

(A) Within six (6) years after the assessment of the tax; or

(B) Prior to the expiration of any period of collection agreed upon in writing by the Tax Collector and the taxpayer before the expiration of such six (6) year period, or any extensions thereof; or

(C) At any time for the collection of tax arising by reason of a tax lien perfected, recorded, or possessed by the City under this Section.

(Ord. No. 87.17, § 1, 4-23-87; Ord. No. 95.03, 1-12-95)

Sec. 16-595. Collection of taxes when there is succession in and/or cessation of business.

(a) In addition to any remedy provided elsewhere in the City Code that may apply, the Tax Collector may apply the provisions of subsections (b) through (d) below concerning the collection of taxes when there is succession in and/or cessation of business.

(b) The taxes imposed by this Chapter are a lien on the property of any person subject to this Chapter who sells his business or stock of goods, or quits his business, if the person fails to make a final return and payment of the tax within fifteen (15) days after selling or quitting his business.

(c) Any person who purchases, or who acquires by foreclosure, by sale under trust deed or warranty deed in lieu of foreclosure, or by any other method, improved real property or a portion of improved real property for which the Privilege Tax imposed by this Chapter has not been paid shall be responsible for payment of such tax as a speculative builder or owner-builder, as provided in Sections 16-416 and 16-417.

(1) Any person who is a creditor or an affiliate of creditor, who acquires improved real property directly or indirectly from the creditor's debtor by any means set forth in this subsection, shall pay the tax based on the amount received by the creditor or its affiliate in a subsequent sale of such improved real property to a party unrelated to the creditor, regardless of when such subsequent sale takes place. Such tax shall be due in the month following the month in which the sale of the improved real property by the creditor or its affiliate occurs. Notwithstanding the foregoing, if the real property meets the definition of partially improved residential real property in Section 16-416(a)(4) and all of the requirements of Section 16-416(b)(4) are met by the parties to the subsequent sale transaction, then the tax shall not apply to the subsequent sale.

(2) In the event a creditor or its affiliate uses the acquired improved real property for any business purpose, other than operating the property in the manner in which it was operated, or was intended to be operated, before the acquisition or in any other manner unrelated to selling the property, the tax shall be due. The gross income upon which the tax shall be determined pursuant to Sections 16-416 and 16-417 shall be the fair market value of the improved real property as of the date of acquisition. The tax shall be due in the month following the month in which such first business use occurs. When applicable, the credit bid shall be deemed to be the fair market value of the property as of the date of acquisition.

(3) Once the subsequent sale by the creditor or its affiliate has occurred and the creditor or its affiliate has paid the tax due from it pursuant to this subsection, neither the creditor nor its affiliate, nor any future owner, shall be liable for any outstanding tax, penalties or interest that may continue to be due from the debtor based on the transfer from the debtor to the creditor or its affiliate.

(4) If the tax liability imposed by either Section 16-416 or Section 16-417 on the transfer of the improved real property to the creditor or its affiliate, or any part thereof, is paid to the tax collector by the debtor subsequent to payment of the tax by the creditor or its affiliate, the amount so paid may constitute a credit, as equitably determined by the Tax Collector in good faith, against the tax imposed on the creditor or its affiliate by either paragraph 1 or paragraph 2 of this subsection.

(5) Notwithstanding anything in this Chapter to the contrary, if a creditor or its affiliate is subject to tax as described in paragraph 1 or paragraph 2 of this subsection and such creditor or affiliate has not previously been required to be licensed, such creditor or affiliate shall become licensed no later than the date on which the tax is due.

(d) A person's successors or assignees shall withhold from the purchase money an amount sufficient to cover the taxes required to be paid, and interest or penalties due and payable, until the former owner produces a receipt from the Tax Collector showing that all City tax has been paid or a certificate stating that no amount is due as then shown by the records of the Tax Collector. The Tax Collector shall respond to a request from the seller for a certificate within fifteen (15) days by either providing the certificate or a written notice stating why the certificate cannot be issued.

(1) If a subsequent audit shows a deficiency arising before the sale of the business, the deficiency is an obligation of the seller and does not constitute a liability against a buyer who has received a certificate from the Tax Collector.

(2) If the purchaser of a business or stock of goods fails to obtain a certificate as provided by this Section, he is personally liable for payment of the amount of taxes required to be paid by the former owner on account of the business so purchased, with interest and penalties accrued by the former owner or assignees.

(Ord. No. 87.17, § 1, 4-23-87; Ord. No. 88.32, § 1(16), 4-28-88, Ord. No. 2010.47, 12-9-10)

Sec. 16-596. Agreement for installment payments of tax.

(a) The City may enter into an agreement with a taxpayer to allow the taxpayer to satisfy a liability for any tax imposed by this Chapter by means of installment payments. The Tax Collector may require a taxpayer who requests an installment payment agreement to complete a financial report in such form and manner as the Tax Collector may prescribe.

(b) The Tax Collector, without notice, may alter, modify or terminate an installment payment agreement if the taxpayer:

(1) Fails to pay an installment at the time the installment payment is due under the agreement.

(2) Fails to pay any other tax liability at the time the liability is due.

(3) Fails to file any tax report or return at the time the report or return is due.

(4) Fails to furnish any information requested by the Tax Collector within thirty (30) days after receiving a written request for such information.

(5) Fails to notify the Tax Collector of a material improvement in the taxpayer's financial condition above the income previously reported in the most recent income statement within thirty (30) days after the material improvement.

(6) Provides inaccurate, false or incomplete information to the Tax Collector.

(c) Notwithstanding any installment payment agreement, the Tax Collector may offset any tax refunds against the liabilities provided for in the installment payment agreement, may file and perfect any tax liens and, in the event the taxpayer breaches any term or provision of the installment payment agreement, may engage in collection activities.

(d) The Tax Collector, without notice, may terminate an installment payment agreement if the Tax Collector believes that the collection of tax to which the payment agreement pertains is in jeopardy.

(e) If the Tax Collector determines that the financial condition of a taxpayer has improved, the Tax Collector may alter, modify or terminate the agreement by providing notice to the taxpayer at least thirty (30) days before the effective date of the action. The notice shall include the reasons why the Tax Collector believes the alteration, modification or termination is appropriate.

(f) An installment payment agreement shall remain in effect for the term of the agreement except as otherwise provided in this Section.

(g) A taxpayer who is aggrieved by a decision of the Tax Collector to refuse to enter into an installment payment agreement or to alter, modify or terminate an agreement entered into pursuant to this Section may petition the Taxpayer Problem Resolution Officer to review that determination. The Taxpayer Problem Resolution Officer may stay such alteration, modification or termination pending its review and may modify or nullify the determination.

(h) The City and the taxpayer may modify any installment payment agreement at any time by entering into a new or modified agreement.
(Ord. No. 96.42, 12-12-96)

Sec. 16-597. Private taxpayer rulings; request; revocation or modification; definition.

(a) The Tax Collector shall issue private taxpayer rulings to taxpayers and potential taxpayers on request. Each request shall be in writing and shall:

(1) State the name, address and, if applicable, taxpayer identifying number of the taxpayer or potential taxpayer who requests the ruling.

(2) Describe all facts that are relevant to the requested ruling.

(3) State whether, to the best knowledge of the taxpayer or potential taxpayer, the issue or related issues are being considered by the Tax Collector or any other taxing jurisdiction in connection with an active audit, protest or appeal that involves the taxpayer or potential taxpayer and whether the same request has been or is being submitted to another taxing jurisdiction for a ruling.

(4) Be signed by the taxpayer or potential taxpayer who makes the request or by an authorized representative of the taxpayer or potential taxpayer.

(b) A private taxpayer ruling may be revoked or modified by either:

(1) A change or clarification in the law that was applicable at the time the ruling was issued, including changes or clarifications caused by regulations and court decisions.

(2) Actual written notice by the Tax Collector to the last known address of the taxpayer or potential taxpayer of the revocation or modification of the private taxpayer ruling.

(c) With respect to the taxpayer or prospective taxpayer to whom a private taxpayer ruling is issued, the revocation or modification of a private taxpayer ruling shall not be applied retroactively to tax periods or tax years before the effective date of the revocation or modification and the Tax Collector shall not assess any penalty or tax attributable to erroneous advice that is furnished to the taxpayer or potential taxpayer in the private taxpayer ruling if:

(1) The taxpayer reasonably relied on the private taxpayer ruling.

(2) The penalty or tax did not result either from a failure by the taxpayer to provide adequate or accurate information or from a change in the information.

(d) A private taxpayer ruling may not be relied upon, cited nor introduced into evidence in any proceeding by any taxpayer other than the taxpayer who received the ruling.

(e) A taxpayer may appeal the propriety of a retroactive application of a revoked or modified private taxpayer ruling by filing a written petition with the Tax Collector pursuant to Section 16-570 within forty-five (45) days after receiving written notice of the intent to retroactively apply a revoked or modified private taxpayer ruling.

(f) A private taxpayer ruling constitutes the Tax Collector's interpretation of the Sections of this Chapter only as they apply to the taxpayer making, and the particular facts contained in, the request.

(g) A private taxpayer ruling which addresses a taxpayer's ongoing business activities will apply only to transactions that occur or tax liabilities that accrue from and after the date of the taxpayer's ruling request.

(h) The Tax Collector shall attempt to issue private taxpayer rulings within forty-five (45) days after receiving the written request and on receiving the facts that are relevant to the ruling. If the ruling is expected to be delayed beyond the forty-five (45) days, the Tax Collector shall notify the requestor of the delay and the proposed date of issuance.

(i) Within thirty (30) days after being issued, the Tax Collector shall maintain the private taxpayer ruling as a public record and make it available at a reasonable cost for public inspection and copying. The text of private taxpayer rulings are open to public inspection subject to the confidentiality requirements prescribed by Section 16-510.

(j) In this Section, "private taxpayer ruling" means a written determination by the Tax Collector issued pursuant to this Section that interprets and applies one or more Sections contained in this Chapter and any applicable regulations.

(k) A private taxpayer ruling issued by the Arizona Department of Revenue pursuant to A.R.S. Section 42-2101 may be relied upon by the taxpayer to whom the ruling was issued and must be recognized and followed by any City in which such taxpayer has obtained a privilege license if the City has not issued a ruling addressing the facts described in the taxpayer's ruling request and the statute at issue in the taxpayer's ruling request is, in essence, worded and written the same as the applicable Section hereunder.
(Ord. No. 96.42, 12-12-96; Ord. No. 2007.20, 4-19-07)

ARTICLE VI. USE TAX

Sec. 16-600. Use tax—Definitions.

For the purposes of this Article only, the following definitions shall apply, in addition to the definitions provided in Article I of this Chapter:

Acquire (for storage or use) means purchase, rent, lease, or license for storage or use.

Retailer also means any person selling, renting, licensing for use, or leasing tangible personal property under circumstances which would render such transactions subject to the taxes imposed in Article IV, if such transactions had occurred within this City.

Storage (within the city) means the keeping or retaining of tangible personal property at a place within the City for any purpose, except for those items acquired specifically and solely for the purpose of sale, rental, lease, or license for use in the regular course of business or for the purpose of subsequent use solely outside the City.

Use (of tangible personal property) means consumption or exercise of any other right or power over tangible personal property incident to the ownership thereof except the holding for the sale, rental, lease, or license for use of such property in the regular course of business.
(Ord. No. 87.17, § 1, 4-23-87)

Sec. 16-601. Reserved.
(Ord. No. 88.32, § 1(17), 4-28-88)

Sec. 16-602. Reserved.
(Ord. No. 88.32, § 1(17), 4-28-88)

Sec. 16-610. Use tax; imposition of tax; presumption.

(a) There is hereby levied and imposed, subject to all other provisions of this Chapter, an excise tax on the storage or use in the City of tangible personal property, for the purpose of raising revenue to be used in defraying the necessary expenses of the City, such taxes to be collected by the Tax Collector.

(b) The tax rate shall be at an amount equal to one and eight-tenths percent (1.8%) of the:

(1) Cost of tangible personal property acquired from a retailer, upon every person storing or using such property in this City.

(2) Gross income from the business activity upon every person meeting the requirements of subsection 16-620(b) or (c) who is engaged or continuing in the business activity of sales, rentals, leases, or licenses of tangible personal property to persons within the City for storage or use within the City, to the extent that tax has been collected upon such transaction.

(3) Cost of the tangible personal property provided under the conditions of a warranty, maintenance, or service contract.

(4) Cost of complimentary items provided to patrons without itemized charge by a restaurant, hotel, or other business.

(5) Cost of food consumed by the owner or by employees or agents of the owner of a restaurant or bar subject to the provisions of Section 16-455 of this Chapter.

(c) It shall be presumed that all tangible personal property acquired by any person who at the time of such acquisition resides in the City is acquired for storage or use in this City, until the contrary is established by the taxpayer.

(d) *Exclusion.* For the purposes of this Article, the acquisition of the following shall not be deemed to be the purchase, rental, lease, or license of tangible personal property for storage or use within the City:

(1) Stocks, bonds, options, or other similar materials.

(2) Lottery tickets or shares sold pursuant to Article I, Chapter 5, Title 5, Arizona Revised Statutes.

(3) Platinum, bullion, or monetized bullion, except minted or manufactured coins transferred or acquired primarily for their numismatic value as prescribed by regulation.

(e) Reserved.

(Ord. No. 87.17, § 1, 4-23-87; Ord. No. 93.37, 10-14-93; Ord. No. 96.41, 10-24-96; Ord. No. 96.43, 12-12-96; Ord. No. 2000.37, 9-14-00; Ord. No. 2010.20, 6-24-10; Ord. No. O2014.21, 5-22-14)

Editor's note—(a) Voters granted authority to city council on September 14, 1993, to increase the privilege and use tax from 1% to 1.2%. Ord. No. 93.37, adopted 10-14-93, increased the privilege and use tax from 1% to 1.2%, effective December 1, 1993, per the terms of the Ordinance on file with the city clerk.

(b) Voters granted authority to city council on September 10, 1996, to increase the privilege and use tax from 1.2% to 1.7%. Ord. No. 96.41, adopted 10-24-96, increased the privilege and use tax from 1.2% to 1.7%, effective January 1, 1997, per the terms of the Ordinance on file with the city clerk.

(c) Voters granted authority to city council on May 16, 2000, to increase the privilege and use tax from 1.7% to 1.8%. Ord. No. 2000.37, adopted 9-14-00, increased the privilege and use tax from 1.7% to 1.8%, effective January 1, 2001, per the terms of the Ordinance on file with the city clerk.

(d) Voters granted authority to city council on May 18, 2010, to increase the privilege and use tax from 1.8% to 2%. Ord. No. 2010.20, adopted 6-24-10, increased the privilege and use tax from 1.8% to 2%, effective July 1, 2010, per the terms of the Ordinance on file with the city clerk.

(e) Ordinance No. O2014.21 repealed the temporary privilege and use tax approved by the voters on May 18, 2010, decreasing the privilege and use tax from 2% to 1.8%, effective after June 30, 2014, per the terms of the Ordinance on file with the city clerk.

Sec. 16-620. Use tax—Liability for tax.

The following persons shall be deemed liable for the tax imposed by this Article; and such liability shall not be extinguished until the tax has been paid to this City, except that a receipt

from a retailer separately charging the tax imposed by this Chapter is sufficient to relieve the person acquiring such property from further liability for the tax to which the receipt refers:

(a) Any person who acquires tangible personal property from a retailer, whether or not such retailer is located in this City, when such person stores or uses said property within the City.

(b) Any retailer not located within the City, selling, renting, leasing, or licensing tangible personal property for storage or use of such property within the City, may obtain a License from the Tax Collector and collect the Use Tax on such transactions. Such retailer shall be liable for the Use Tax to the extent such Use Tax is collected from his customers.

(c) Every agent within the City of any retailer not maintaining an office or place of business in this City, when such person sells, rents, leases, or licenses tangible personal property for storage or use in this City shall, at the time of such transaction, collect and be liable for the tax imposed by this Article upon the storage or use of the property so transferred, unless such retailer or agent is liable for an equivalent excise tax upon the transaction.

(d) Any person who acquires tangible personal property from a retailer located in the City and such person claims to be exempt from the City Privilege or Use Tax at the time of the transaction, and upon which no City Privilege Tax was charged or paid, when such claim is not sustainable.

(e) Every person storing or using tangible personal property under the conditions of a warranty, maintenance, or service contract.
(Ord. No. 87.17, § 1, 4-23-87; Ord. No. 96.43, 12-12-96)

Sec. 16-630. Use tax—Recordkeeping requirements.

All deductions, exclusions, exemptions, and credits provided in this Article are conditional upon adequate proof of documentation as required by Article III or elsewhere in this Chapter.
(Ord. No. 87.17, § 1, 4-23-87)

Sec. 16-640. Use tax—Credit for equivalent excise taxes paid another jurisdiction.

In the event that an equivalent excise tax has been levied and paid upon tangible personal property which is acquired to be stored or used within this City, full credit for any and all such taxes so paid shall be allowed by the Tax Collector but only to the extent Use Tax is imposed upon that transaction by this Article.
(Ord. No. 87.17, § 1, 4-23-87)

Sec. 16-650. Use tax—Exclusion when acquisition subject to use tax is taxed or taxable elsewhere in this chapter; limitation.

The tax levied by this Article does not apply to the storage or use in this City of tangible personal property acquired in this City, the gross income from the sale, rental, lease, or license of which were included in the measure of the tax imposed by Article IV of this Chapter; provided, however, that any person who has acquired tangible personal property from a vendor in this City without paying the City Privilege Tax because of a representation to the vendor that the property

was not subject to such tax, when such claim is not sustainable, may not claim the exclusion from such Use Tax provided by this Section.
(Ord. No. 87.17, § 1, 4-23-87)

Sec. 16-660. Use tax—Exemptions.

The storage or use in this City of the following tangible personal property is exempt from the Use Tax imposed by this Article:

(a) Tangible personal property brought into the City by an individual who was not a resident of the City at the time the property was acquired for his own use, if the first actual use of such property was outside the City, unless such property is used in conducting a business in this City.

(b) Tangible personal property, the value of which does not exceed the amount of one thousand dollars ($1,000) per item, acquired by an individual outside the limits of the City for his personal use and enjoyment.

(c) Charges for delivery, installation, or other customer services, as prescribed by Regulation.

(d) Charges for repair services, as prescribed by Regulation.

(e) Separately itemized charges for warranty, maintenance, and service contracts.

(f) Prosthetics.

(g) Income-producing capital equipment.

(h) Rental equipment and rental supplies.

(i) Mining and metallurgical supplies.

(j) Motor vehicle fuel and use fuel which are used upon the highways of this State and upon which a tax has been imposed under the provisions of Article I or II, Chapter 9, Title 28, Arizona Revised Statutes.

(k) Tangible personal property purchased by a construction contractor, but not an owner-builder, when such person holds a valid Privilege License for engaging or continuing in the business of construction contracting, and where the property acquired is incorporated into any structure or improvement to real property in fulfillment of a construction contract.

(l) Sales of motor vehicles to nonresidents of this State for use outside this State if the vendor ships or delivers the motor vehicle to a destination outside this State.

(m) Tangible personal property which directly enters into and becomes an ingredient or component part of a product sold in the regular course of the business of job printing, manufacturing, or publication of newspapers, magazines or other periodicals. Tangible personal

property which is consumed or used up in a manufacturing, job printing, publishing, or production process is not an ingredient nor component part of a product.

(n) Rental, leasing, or licensing for use of film, tape, or slides by a theater or other person taxed under Section 16-410, or by a radio station, television station, or subscription television system.

(o) Food served to patrons for a consideration by any person engaged in a business properly licensed and taxed under Section 16-455, but not food consumed by owners, agents, or employees of such business.

(p) Tangible personal property acquired by a qualifying hospital, qualifying community health center or a qualifying health care organization, except when the property is in fact used in activities resulting in gross income from unrelated business income as that term is defined in 26 U.S.C. Section 512.

(q) Reserved.

(r) Reserved.

(1) Reserved.

(2) Reserved.

(3) Reserved.

(4) Reserved.

(s) Groundwater measuring devices required by A.R.S. Section 45-604.

(t) Paintings, sculptures, or similar works of fine art, provided that such works of fine art are purchased from the original artist; and provided further that "art creations", such as jewelry, macrame, glasswork, pottery, woodwork, metalwork, furniture, and clothing, when such "art creations" have a dual purpose, both aesthetic and utilitarian, are not exempt, whether purchased from the artist or from another.

(u) Aircraft acquired for use outside the State, as prescribed by Regulation.

(v) Sales of food products by producers as provided for by A.R.S. Sections 3-561, 3-562 and 3-563.

(w) Reserved.

(x) Food and drink provided by a person who is engaged in business that is classified under the restaurant classification without monetary charge to its employees for their own consumption on the premises during such employees' hours of employment.

(y) Reserved.

(z) Reserved.

(aa) Tangible personal property used in remediation contracting as defined in Section 16-100 and Regulation 16.100.5.

(bb) Materials that are purchased by or for publicly funded libraries including school district libraries, charter school libraries, community college libraries, state university libraries or federal, state, county or municipal libraries for use by the public as follows:

(1) Printed or photographic materials.

(2) Electronic or digital media materials.

(cc) Food, beverages, condiments and accessories used for serving food and beverages by a commercial airline, as defined in A.R.S. Section 42-5061(A)(49), that serves the food and beverages to its passengers, without additional charge, for consumption in flight. For the purposes of this subsection, "accessories" means paper plates, plastic eating utensils, napkins, paper cups, drinking straws, paper sacks or other disposable containers, or other items which facilitate the consumption of the food.

(dd) Wireless telecommunication equipment that is held for sale or transfer to a customer as an inducement to enter into or continue a contract for telecommunication services that are taxable under Section 16-470.

(ee) Reserved.

(ff) Alternative fuel as defined in A.R.S. Section 1-215, by a used oil fuel burner who has received a Department of Environmental Quality permit to burn used oil or used oil fuel under A.R.S. Section 49-426 or Section 49-480.

(gg) Food, beverages, condiments and accessories purchased by or for a public educational entity, pursuant to any of the provisions of Title 15, Arizona Revised Statutes, including a regularly organized private or parochial school that offers an educational program for grade twelve or under which may be attended in substitution for a public school pursuant to A.R.S. Section 15-802; to the extent such items are to be prepared or served to individuals for consumption on the premises of a public educational entity during school hours. For the purposes of this subsection, "accessories" means paper plates, plastic eating utensils, napkins, paper cups, drinking straws, paper sacks or other disposable containers, or other items which facilitate the consumption of the food.

(hh) Personal hygiene items purchased by a person engaged in the business of and subject to tax under Section 16-444 of this code if the tangible personal property is furnished without additional charge to and intended to be consumed by the person during his occupancy.

(ii) The diversion of gas from a pipeline by a person engaged in the business of operating a natural or artificial gas pipeline, for the sole purpose of fueling compressor equipment to pressurize the pipeline, is not a sale of the gas to the operator of the pipeline.

(jj) Food, beverages, condiments and accessories purchased by or for a nonprofit charitable organization that has qualified as an exempt organization under 26 U.S.C. Section 501(c)(3) and regularly serves meals to the needy and indigent on a continuing basis at no cost. For the purposes of this subsection, "accessories" means paper plates, plastic eating utensils, napkins, paper cups, drinking straws, paper sacks or other disposable containers, or other items which facilitate the consumption of the food.

(kk) Sales of motor vehicles that use alternative fuel if such vehicle was manufactured as a diesel fuel vehicle and converted to operate on alternative fuel and sales of equipment that is installed in a conventional diesel fuel motor vehicle to convert the vehicle to operate on an alternative fuel, as defined in A.R.S. Section 1-215.

(ll) The storage use or consumption of tangible personal property in this city by a school district or charter school.

(mm)Renewable energy credits of any other unit created to track energy derived from renewable energy resources. For the purposes of this paragraph, "renewable energy credit" means a unit created administratively by the corporation commission or governing body of a public power utility to track kilowatt hours of electricity derived from a renewable energy resource or the kilowatt hour equivalent of conventional energy resources displaced by distributed renewable energy resources.

(nn) Magazines or other periodicals or other publications by this State to encourage tourist travel.

(oo) Paper machine clothing, such as forming fabrics and dryer felts, sold to a paper manufacturer and directly used or consumed in paper manufacturing.

(pp) Overhead materials or other tangible personal property that is used in performing a contract between the United States government and a manufacturer, modifier, assembler or repairer, including property used in performing a subcontract with a government contractor who is a manufacturer, modifier, assembler or repairer, to which title passes to the government under the terms of the contract or subcontract.

(qq) Coal, petroleum, coke, natural gas, virgin fuel oil and electricity sold to a qualified environmental technology manufacturer, producer or processor as defined in A.R.S. Section 41-1514.02 and directly used or consumed in the generation or provision of on-site power or energy solely for environmental technology manufacturing, producing or processing or environmental protection. This paragraph shall apply for twenty (20) full consecutive calendar or fiscal years from the date the first paper manufacturing machine is placed in service. In the case of an environmental technology manufacturer, producer or processor who does not manufacture paper, the time period shall begin with the date the first manufacturing, processing or production equipment is placed in service.

(rr) Machinery, equipment, materials and other tangible personal property used directly and predominantly to construct a qualified environmental technology manufacturing, producing or processing facility as described in A.R.S. Section 41-1514.02. This subsection applies for ten (10) full consecutive calendar or fiscal years after the start of initial construction.
(Ord. No. 87.17, § 1, 4-23-87; Ord. No. 88.32, § 1(18), 4-28-88; Ord. No. 95.03, 1-12-95; Ord. No. 96.43, 12-12-96; Ord. No. 98.12, 3-12-98; Ord. No. 98.37, 06-25-98; Ord. No. 99.40, 12-16-99; Ord. No. 2001.16, 7-26-01; Ord. No. 2007.20, 4-19-07; Ord. No. 2011.31, 9-8-11; Ord. No. O2014.01, 1-9-14)

ARTICLE VII. RESERVED

ARTICLE VIII. RESERVED

Chapter 16A

LICENSE AND BUSINESS REGULATIONS

ARTICLE I. DEALERS IN USED GOODS[1]

DIVISION 1. GENERALLY

Sec. 16A-1. Definitions.

The following words, terms and phrases when used in this article shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Antiques means goods and articles which have a greater collectible, historic or nostalgic rather than utilitarian value.

Antique dealer means any person operating a place of business that buys, sells or otherwise deals in antiques. Additionally, to qualify as an antique dealer, such person must meet the following additional requirements:

(1) Such person's inventory must consist of more than fifty percent (50%) antiques by each licensed dealer;

(2) Such person must have a minimum of two (2) years experience as an antique dealer or an employee thereof;

(3) Such person must furnish receipts for property both sold, purchased or traded; and

(4) Such person must provide a written guarantee that the article sold is what it purports to be.

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[1]**State law references—**Dealers in precious items, A.R.S. § 44-1601 et seq.; pawnbrokers, A.R.S. § 14-1621 et seq.; scrap metal dealers, A.R.S. § 44-1641 et seq.; jewelry auctions, A.R.S. § 44-1671 et seq.

Editor's note—Section 5 of Ord. No. 88.32, adopted April 28, 1988, amended the Code by transferring provisions formerly codified as Arts. IX—XI of Ch. 16 to a newly created Ch. 16A as Arts. I—III.

Cross reference—Advertising and signs, Ch. 3; Alcoholic beverages, Ch. 4; Amusement, Ch. 5; registration of bicycles, § 7-11 et seq.; maintenance electrician's or plumber's certificate of registration, § 8-104.9; Mobile homes and trailer coaches, Ch. 18; Peddlers, solicitors and itinerant merchants, Ch. 24.

Auction house means any person operating a place of business where property is received from other persons or businesses, when such property is to be resold either publicly or privately for cash, other property or other consideration to a third party by auction.

Pawnbrokers means any person engaged in conducting, managing or carrying on the business of pawnbroking, or the business of loaning money for himself or for any other person, receiving as security for the repayment thereof, pawns or pledges of personal property, or the business of purchasing personal property and reselling or agreeing to resell such articles to vendors, their personal representatives or their assignees, at prices agreed upon at or before the time of such purchase, whether such business be principal or sole business so carried on, managed or conducted, or merely incidental to, in connection with or a branch or department of some other business or businesses.

Scrap dealer means any person, engaged in the business of purchasing or obtaining material of any kind, such as any vehicle parts or accessories, machinery, iron, copper, brass, lead, zinc, tin, steel, aluminum and other metals, metal alloys, metallic cables, wire, batteries, rope, rubber and other like materials which are purchased or obtained from persons other than the original manufacturer or authorized distributor selling the same for money, credit or exchange. The material purchased or obtained is put to a use inconsistent with the original purpose of the property; to be scrapped, dismantled, melted, pressed or otherwise disfigured, and to be resold to others in the form so altered, or used by the purchaser in its altered form. The provisions of this article shall not apply to any persons engaged solely in recycling metal cans, paper, cardboard or glass.

Secondhand dealer means any person(s) engaged in conducting, managing or carrying on the business of buying, selling, trading or exchanging, or otherwise dealing in secondhand goods, wares, merchandise or articles, coins, jewelry, precious metals, semiprecious stones and similar items, whether such business is the principal or sole business so carried on, managed or conducted or is merely incidental to, in connection with or a branch or a department of some other business. The term "secondhand dealer" shall not be construed to include dealers or auctioneers in articles of property the transfer of title to which is required by the laws of the state. Such is evidenced by written instrument and recorded in the appropriate department of the state or county government.
(Code 1967, § 16A-l; Ord. No. 87.17, § 5, 4-23-87; Ord. No. 88.32, § 5, 4-28-88; Ord. No. 90.22, § 1, 5-24-90)

Sec. 16A-2. Exemptions.

(a) Notwithstanding any of the provisions of this article, isolated and causal transactions of the kinds described in § 16A-1 shall be deemed exempt from the requirements of this article.

(b) Notwithstanding any of the provisions of this article, activities of the types described in § 16A-1 shall be exempt from the requirements of this article when conducted by not for profit corporation, duly incorporated under the laws of Arizona or any other state.

(c) Notwithstanding any of the provisions of this article, activities of the types described in § 16A-1 involving books and other printed materials, clothing, phonograph records, audio cassette tapes, compact discs, videotapes, video games, computer software, digital video discs or like items shall be deemed exempt from the requirements of this article.
(Code 1967, § 16A-2; Ord. No. 87.17, § 5, 4-23-87; Ord. No. 88.32, § 5, 4-28-88; Ord. No. 89.21, 4-27-89; Ord. No. 96.27, 8-29-96; Ord. No. 2002.04, 1-17-02)

Sec. 16A-3. Reports of transactions required; exceptions.

(a) Every person engaged in the business of auction house, scrap dealer, pawnbroker or secondhand dealer shall make out and deliver to the chief of police a true, complete and legible report of all goods and articles received on deposit, in pawn, pledge, trade or exchange, or by purchase. The report shall be made upon sheets furnished by the police department, and shall be delivered within twenty-four (24) hours after receipt of the property concerned. Each sheet shall contain for each item received:

(1) A complete description of the property, including brand name and serial number, if any. If more than one of any item, the number of the like-type items received;

(2) The date and time when the property was received;

(3) The signature of the person from whom the property was received;

(4) The name (printed), address and date of birth of such person. The reporting party shall require each person to show proof of his name, address and age by exhibiting a valid driver's license, State of Arizona identification card, armed forces identification card or selective service registration certificate, and the number of such identification certificate shall be recorded;

(5) The dealers name and the name of person receiving the property; and

(6) A description of such person, consisting of height, sex, weight, race, complexion, hair color and identifying marks, scars or tattoos.

(b) Notwithstanding the provisions of subsection (a), the report described therein need not be filed if a transaction in used goods constitutes a partial trade for new or used merchandise of like kind. This exemption applies only if the dealer maintains accurate records including a complete description of the property (brand name, serial number and any other identifying data) of the new or used merchandise sold and similar identifying information insofar as the used good constituting the partial trade for such new or used merchandise of like kind. These records shall be open for inspection to members of the Tempe police department during all business hours.

(c) Notwithstanding the provisions of subsection (a), the report described therein need not be filed with respect to transactions solely between merchants licensed under this article or between merchants who would be required by this article to secure licenses if their establishment were located in the city.

(d) Notwithstanding the provisions of subsection (a), the report described therein need not be filed for certain antique dealers if the following conditions are met:

(1) More than five (5) secondhand dealers rent or share common or contiguous space at the same business location; and

(2) For goods and articles received on deposit, in pawn, pledge, trade or exchange, or by purchase excepting jewelry, precious and semiprecious metals (including articles composed of or plated with precious or semiprecious metals), precious and semiprecious stones and all on-site pawns, pledges, trades, exchanges or purchases for which the normal reporting requirements must be met.

(e) Notwithstanding the provisions of subsection (a), the report described therein need not be filed for antique dealers if the following condition is met: For goods and articles received on deposit, in pawn, pledge, trade or exchange, or by purchase excepting jewelry, precious and semiprecious metals (including articles composed of or plated with precious or semiprecious metals) and precious and semiprecious stones for which the normal reporting requirements must be met.
(Code 1967, § 16A-5; Ord. No. 87.17, § 5, 4-23-87; Ord. No. 88.32, § 5, 4-28-88; Ord. No. 89.64, 12-14-89; Ord. No. 90.22, § 2, 5-24-90; Ord. No. 96.47, 11-14-96)

State law references—Reports by precious metals dealers, A.R.S. § 44-1602; reports by pawnbrokers, A.R.S. § 44-1622; records of scrap metal dealers, A.R.S. § 44-1642; inventory to be submitted of items at jewelry auctions, A.R.S. § 44-1674.

Sec. 16A-4. Holding period prior to resale or exchange.

(a) No article shall be sold or exchanged by any auction house, scrap dealer, pawnbroker or secondhand dealer until it shall have been in the custody thereof for ten (10) days after making out and delivering to the chief of police the report required under § 16A-3. In the case of property consigned to an auction house, such property shall not be sold or exchanged until it shall have been in the custody thereof for five (5) days after delivery to the chief of police the report required under § 16A-3. This subsection shall not apply to redemption of pawned articles.

(b) The holding period described in subsection (a) shall not apply to nonfabricated precious and semiprecious metals. An item shall be deemed nonfabricated for the purpose of this chapter only if at the time of the transaction it is in ingot, bullion or coin form.

(c) The holding period described in subsection (a) shall not apply to certain antique dealers if the following conditions are met:

(1) More than five (5) antique dealers rent or share common or contiguous space at the same business location; and

(2) For goods and articles received on deposit, in pawn, pledge, trade or exchange, or by purchase excepting jewelry, precious and semiprecious metals (including articles composed of or plated with precious or semiprecious metals), precious and semiprecious stones and all on-site pawns, pledges, trades, exchanges or purchases for which the normal ten-day holding period shall be applicable.

(d) The holding period described in paragraph (a) shall not apply to antique dealers if the following condition is met: For goods and articles received on deposit, in pawn, pledge, trade or exchange, or by purchase excepting jewelry, precious and semiprecious metals (including articles composed of or plated with precious or semiprecious metals) and precious and semiprecious stones which the normal ten-day holding period shall be applicable.
(Code 1967, § 16A-7; Ord. No. 87.17, § 5, 4-23-87; Ord. No. 88.32, § 5, 4-28-88; Ord. No. 89.64, 12-14-89; Ord. No. 90.22, § 2, 5-24-90)

State law references—Holding period for precious items, A.R.S. § 44-1602(D); holding period for pawned items, A.R.S. § 44-1625.

Sec. 16A-5. Transactions with minors.

(a) No merchant, regardless of whether he is required to be licensed under the provisions of this article, shall buy, pledge, pawn or otherwise accept merchandise from any person under the age of eighteen (18) years, unless such minor first produces a notarized letter, signed by the minor's parent or guardian, granting permission to the minor to transfer an interest in the property.

(b) It shall not be a defense to an alleged violation of subsection (a) that the merchant reasonably believed the minor to be eighteen (18) years or older unless the minor produced an Arizona driver's license, or other identification as specified in § 16A-3 and that identification purported to identify the minor as someone eighteen (18) years of age or older.
(Code 1967, § 6A-8; Ord. No. 87.17, § 5, 4-23-87; Ord. No. 88.32, § 5, 4-28-88)

State law reference—Pawnbrokers not to receive junk, metal or mechanical tools from child under sixteen (16), A.R.S. § 44-1627.

Sec. 16A-6. Property connected with crime.

Upon notification by representatives of the police department that goods and articles received are either the fruits of a crime, or weapons or other items used to perpetrate a crime, no auction house, scrap dealer, pawnbroker or secondhand dealer shall dispose of such property. Interest, if charged, upon the pawn, pledge or item for resale, shall cease to accrue as of the date of such notification. Upon receiving a receipt from a representative of the police department, the auction house, scrap dealer, pawnbroker or secondhand dealer shall turn over to the representatives of the police department such items.
(Code 1967, § 16A-9; Ord. No. 87.17, § 5, 4-23-87; Ord. No. 88.32, § 5, 4-28-88)

Sec. 16A-7. Display of regulations.

Every person engaged in the business of auction house, scrap dealer, pawnbroker or secondhand dealer shall prominently display a copy of this article and required license in a conspicuous, place on the premises of the business.
(Code 1967, § 16A-10; Ord. No. 87.17, § 5, 4-23-87; Ord. No. 88.32, § 5, 4-28-88)

Sec. 16A-8. Inspection of goods and records.

The business premises including stock of goods and articles and all ledgers, books, records or memoranda required to be kept by this article or state statute of any auction house, scrap dealer, pawnbroker or secondhand dealer shall be open for immediate inspection during regular business hours to representatives of the police department.
(Code 1967, § 6A-11; Ord. No. 87.17, § 5, 4-23-87; Ord. No. 88.32, § 5, 4-28-88)

Sec. 16A-9. Fingerprinting.

Every owner or manager of an auction house, scrap dealer, pawnbroker or secondhand dealer prior to conducting such business or the issuance of a license shall submit a full set of fingerprints to the Tempe police department for the purpose of obtaining a state or federal, or both, criminal records check pursuant to A.R.S. § 41-1750 and Public Law (PL) 92-544. The Department of Public Safety is authorized to exchange this fingerprint data with the Federal Bureau of Investigation. Fingerprints must be submitted on fingerprint cards provided by the finance and technology director or designee.
(Code 1967, § 6A-13; Ord. No. 87.17, § 5, 4-23-87; Ord. No. 88.32, § 5, 4-28-88; Ord. No. 2002.04, 1-17-02; Ord. No. 2002.25, 8-1-02; Ord. No. 2010.02, 2-4-10)

Sec. 16A-10. Employing convicted violators of article.

No person engaged in the business of auction house, scrap dealer, pawnbroker or secondhand dealer shall knowingly permit a person whose license has been revoked under § 16A-28 to be employed in any capacity at such establishment. The chief of police shall keep a list of all persons convicted under this article and such names shall be available to operators above. Such operators will be assumed to have constructive notice thereof for purposes of prosecution under this article.
(Code 1967, § 16A-12; Ord. No. 87.17, § 5, 4-23-87; Ord. No. 88.32, § 5, 4-28-88)

Sec. 16A-11. Employing persons with criminal record.

No person who has been convicted of any offense, felony or misdemeanor involving moral turpitude within the five-year period immediately prior to his application for either a license under this article or employment in an establishment required by this article to be licensed shall be issued a license to transact business pursuant to this article or employed by any person licensed to transact business pursuant to this article.
(Code 1967, § 6A-14; Ord. No. 87.17, § 5, 4-23-87; Ord. No. 88.32, § 5, 4-28-88)

Secs. 16A-12—16A-25. Reserved.

DIVISION 2. LICENSE

Sec. 16A-26. Required; duration; fee.

(a) It shall be unlawful for any person to act within the city as an auction house, scrap dealer, pawnbroker or secondhand dealer without first obtaining a license to do so from the finance and technology director or his authorized representative.

(b) The license shall be issued for a calendar year or portion thereof, and a new application shall be required for each subsequent calendar year.

(c) The license fee shall be established by city council (see Appendix A).
(Code 1967, § 16A-2(a), (e), (f); Ord. No. 87.17, § 5, 4-23-87; Ord. No. 88.32, § 5, 4-28-88; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Sec. 16A-27. Application procedure; appeals from denial.

(a) Any person desiring a license to act as an auction house, scrap dealer, pawnbroker or secondhand dealer shall file an application on forms provided for that purpose. Application shall include such information as the police chief deems necessary for the complete investigation of the character and qualifications of the applicant.

(b) No license shall be issued by the finance and technology director or his authorized representative without the approval in writing of the police chief. The police chief shall approve the issuance of the license if the applicant has not been convicted of a felony or a misdemeanor involving moral turpitude. The recommendation of the police chief must be made within thirty (30) days after the application is filed.

(c) Any applicant whose license is denied may, within ten (10) days after being sent by registered or certified mail notice of such denial, give written notice to the finance and technology director or his authorized representative of intention to appeal to the city council. Appeals will be heard by the city council at the next regularly scheduled meeting but no sooner than five (5) working days from date of filing notice.
(Code 1967, § 16A-3(a), (c), (d); Ord. No. 87.17, § 5, 4-23-87; Ord. No. 88.32, § 5, 4-28-88; Ord. No. 2001.17, 7-26-01; Ord. No. 2002.04, 1-17-02; Ord. No. 2010.02, 2-4-10)

Sec. 16A-28. Suspension; appeals.

(a) Notwithstanding any other provisions of this article, the license of any auction house, scrap dealer, pawnbroker or secondhand dealer shall be suspended for six (6) months upon a showing that an operator or employee of such establishment has been convicted of violating any of the provisions of this code or a city ordinance or any of the statutes of the state regarding the conduct of the business of such an establishment more than one time during a three-year period. Violations of this article or state law by any person or his agents or employees regarding the operations of businesses defined in this article shall be grounds to deny issuance or renewals of the license required in this article.

(b) Conviction under any provision of this article shall be deemed conclusive evidence of such violation.

(c) Any licensee whose license is suspended may, within ten (10) days after being sent by registered or certified mail notice of such suspension, give written notice to the finance and technology director or his authorized representative of his intention to appeal the suspension to the city council. Appeals will be heard by the city council at the next regularly scheduled meeting but no sooner than five (5) working days from the date of filing notice.
(Code 1967, § 16A-4; Ord. No. 87.17, § 5, 4-23-87; Ord. No. 88.32, § 5, 4-28-88; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Sec. 16A-29. Providing false information.

It shall be unlawful for any individual to provide false information on reports required by any section of this article or to provide false information on any license application.
(Code 1967, § 6A-6; Ord. No. 87.17, § 5, 4-23-87; Ord. No. 88.32, § 5, 4-28-88)

Secs. 16A-30—16A-39. Reserved.

ARTICLE II. RESIDENTIAL DEVELOPMENT TAX[2]

Sec. 16A-40. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Dwelling unit means a room or group of rooms within a building, containing cooking accommodations. An apartment and a mobile home shall be considered a dwelling unit, but a hotel room, a motel room or a travel trailer shall not be considered a dwelling unit under the provisions of this article.

Mobile home space means any lot or space contained in a mobile home park, as defined by the Zoning and Development Code.
(Code 1967, § 33-49; Ord. No. 87.17, § 5, 4-23-87; Ord. No. 88.32, § 5, 4-28-88; Ord. No. 2004.42, 1-20-05)

Sec. 16A-41. Levy; exception.

(a) There is hereby levied and shall be collected by the community development director, for the purpose of defraying the cost of acquiring sites and providing public improvements required by the city as a result of residential development, an occupational fee or tax upon every person constructing any dwelling unit or units establishing mobile home spaces within the city. Fee shall be established by city council (see Appendix A).

(b) A development tax is not required for a caretaker's residence where allowed pursuant to the Zoning and Development Code.
(Code 1967, § 33-50; Ord. No. 87.17, § 5, 4-23-87; Ord. No. 88.32, § 5, 4-28-88; Ord. No. 88.82, 1-26-89; Ord. No. 97.20, 4-10-97; Ord. No. 97.04, 7-10-97; Ord. No. 2001.17, 7-26-01; Ord. No. 2004.42, 1-20-05; Ord. No. 2010.02, 2-4-10)

Sec. 16A-42. Collection.

The fee or tax imposed by this article shall be collected by the community development director who shall be charged with the administration of this article. The fee for each dwelling unit shall be collected by the community development director prior to the issuance of a building permit for the construction of any dwelling unit, and the fee with respect to any mobile home space shall be collected prior to the issuance of a construction permit for the development of a mobile home park. The community development director shall not issue a building permit or construction permit until the fees required by this article have been paid.
(Code 1967, § 33-51; Ord. No. 87.17, § 5, 4-23-87; Ord. No. 88.32, § 5, 4-28-88; Ord. No. 97.20, 4-10-97; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

[2]**Cross reference—**Planning and development, Ch. 25.

Sec. 16A-43. Capital improvement fund.

All funds collected by the community development director pursuant to this article shall be deposited in a nonlapsing fund called "Capital Improvement Fund No. _____" and such fund is hereby created. All funds deposited in the capital improvement fund shall be used exclusively for purchases of sites and capital improvements.
(Code 1967, § 33-52; Ord. No. 87.17, § 5, 4-23-87; Ord. No. 88.32, § 5, 4-28-88; Ord. No. 97.20, 4-10-97; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Sec. 16A-44. Dedication of sites in lieu of tax.

If a person proposes a subdivision which includes a plan and a program for a complete community or neighborhood, including the dedication of adequate public sites and improvements, the city council may, upon recommendation by the development review commission, accept the dedication of such sites and improvements in lieu of the tax levied by this article; provided, that the value of such space and improvements, as determined by the city council, apportioned over the number of dwelling units proposed to be erected and mobile home spaces to be developed is substantially equal to the amount of tax levied by § 16A-41; and, if the dedications referred to above do not substantially equal in value the amount of taxes levied and measured as set forth in § 16A-41, as determined by the city council, the city council may accept such dedications in partial payment of such taxes and collect the remainder thereof in cash.
(Code 1967, § 33-53; Ord. No. 87.17, § 5, 4-23-87; Ord. No. 88.32, § 5, 4-28-88; Ord. No. 2006.01, 1-5-06)

Sec. 16A-45. Penalties.

Any person who shall construct a dwelling unit or develop a mobile home park without payment of the prescribed fee or who shall violate any of the provisions of this article shall be guilty of a misdemeanor.
(Code 1967, § 33-54; Ord. No. 87.17, § 5, 4-23-87; Ord. No. 88.32, § 5, 4-28-88)

Secs. 16A-46—16A-55. Reserved.

ARTICLE III. ESCORTS, ESCORT BUREAUS AND INTRODUCTORY SERVICE[3]

Sec. 16A-56. Definitions.

For the purpose of this article, the following terms shall have the meanings respectively ascribed to them in this section unless the context clearly requires otherwise:

(1) *City manager* means the city manager or his designee.

(2) *Consideration* means payment, reward or anything regarded as a return given or suffered by one for the act or promise of another.

(3) *Escort* means any person who for consideration in any form or for a fee, commission or salary, acts as or is held out to the public as available for hire to consort with or to accompany another or others to social affairs, places of amusement or entertainment, within any place of public resort, or within any private quarters.

(4) *Escort bureau* means any person who for a fee, commission, profit, payment or other monetary consideration, furnishes, refers, or offers to furnish or refer escorts, or provides, or offers to introduce, patrons to escorts.

(5) *Escort bureau runner* means any person, not an escort, who for consideration, on behalf of or as the agent for either an escort, escort bureau or a patron, contacts, transports or meets with escort patrons, escorts or escort bureaus at any location other than the established open office, as defined hereunder, whether that person is employed by the escort bureau or any business, or is self-employed.

(6) *Introductory service* means any person who, for consideration, offers to assist any person in meeting any other person for social or personal purposes not connected with or forming part of another lawful business or professional activity.

(7) *Licensee* means a person who is the holder of a valid license under this article. A licensee includes an agent, servant, employee or other person while acting on behalf of that licensee whenever such licensee is or would be prohibited from doing or performing an act or acts under this title.

(8) *Licensing officer* means the city finance and technology director or his designee.

(9) *Offer to provide acts of sexual conduct* means to offer, propose or solicit to provide to or engage in sexual conduct with a patron, including but not limited to all conversations, advertisements and acts which would lead a reasonably prudent person to conclude that such acts were to be provided or engaged in.

[3]**Editor's note**—Ord. No. 95.48 repealed prior §§ 16A-56 through 16A-68, Escorts, escort bureaus and introductory services, and enacted this chapter. Prior ordinances were Ord. No. 86.73 and Ord. No. 88.32.

Cross reference—Adult-oriented businesses, § 16A-112 et seq.

(10) *Open office* means an office or premises of the licensed escort bureau at an address from which escort business is transacted and which meets the requirements of this article.

(11) *Person* means any individual, or any firm, partnership, corporation or association of any kind.

(12) *Person financially interested* means a corporation, any person who is an officer or a director or any shareholder holding more than five percent (5%) of the shares thereof; and for a noncorporate business any person who shares in financial gain attributable to the business as a proprietor or owner or on the basis of a percentage in excess of five percent (5%) of gross or ten percent (10%) of net revenue.

(13) *Sexual conduct* means

a. engaging in or the commission of an act of sexual intercourse, oral-genital contact, or the touching of the sexual organs, pubic region, buttock or female breast of a person for the purpose of arousing or gratifying sexual desire of another person; or

b. any service, including but not limited to modeling, posing, performance, dance or other activity, conducted for any consideration by a person who is nude during all or part of the time that such person is providing the service. "Nude" means without opaque non-flesh colored fabric fully covering the human anus, pubic region, genitals or areola of a female breast.

(14) *Sexual gratification* means sexual conduct as defined herein.

(15) *Sexually oriented acts* means sexual conduct as defined herein.

(16) *Sexually oriented escort* means an escort who:

a. Works for, as an agent, employee or independent contractor, or is referred to a patron by a sexually oriented escort bureau;

b. Advertises that sexual conduct will be provided, or works for as an agent, employee or independent contractor, or is referred to a patron by an escort bureau which so advertises;

c. Solicits, offers, agrees to provide or does provide acts of sexual conduct to an escort patron;

d. Accepts an offer or solicitation to provide acts of sexual conduct for a fee in addition to the fee charged by the escort bureau.

(17) *Sexually oriented escort bureau* means an escort bureau which:

a. Engages in advertising to make the prospective patron believe that acts of sexual conduct or sexual stimulation will be provided;

b. Uses as escorts persons known to have violated the law regarding prostitution;

c. Does not maintain an open office;

d. Advertises that sexual conduct will be provided or that escorts which provide each sexual conduct will be provided, referred, or introduced to a patron;

e. Solicits, offers or agrees to provide or does provide acts of sexual conduct to a patron;

f. Employs, contracts with or provides or refers escorts who do not possess escort identification cards as required herein;

g. Does not deliver contracts to every patron or customer; or

h. Employs, contracts with, or refers or provides to a patron, a sexually oriented escort.

(18) *Sexual stimulation* means to excite or arouse the prurient interest or to offer or solicit acts of sexual conduct as defined under "offer to provide acts of sexual conduct".

(Ord. No. 86.73, § 1, 11-13-86; Ord. No. 88.32, § 5, 4-28-88; Ord. No. 95.48, 12-14-95; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Sec. 16A-57. Escort bureau license, introductory service license, required.

(a) It is unlawful for any person to work or perform services as, conduct, manage, operate, or maintain an escort bureau unless licensed pursuant to this article.

(b) It is unlawful for any person to operate a business which has been licensed under this article while the license for that business is suspended.

(c) It is unlawful for any person to work or perform services as, conduct, operate, manage, or maintain a sexually oriented escort bureau, regardless of license.

(d) It is unlawful for any person to act in the capacity of or engage in the activity or an introductory service without a valid license issued pursuant to the provisions of this article.

(e) A separate license is required for each location or name by which an escort bureau or introductory service conducts business or advertises.

(Ord. No. 86.73, § 1, 11-13-86; Ord. No. 88.32, § 5, 4-28-88; Ord. No. 95.48, 12-14-95)

Sec. 16A-58. Escort must work for licensed bureau or be licensed as a bureau.

(a) It is unlawful for any person to work or perform services as an escort within the city unless employed by a licensed escort bureau or licensed as an escort bureau.

(b) It is unlawful for any person to work or perform services as a sexually oriented escort, regardless of license.

(c) An escort shall:

(1) Operate from an open office;

(2) Not advertise that sexual conduct will be provided or work for an escort bureau which so advertises;

(3) Not offer, solicit, agree to provide, or provide sexual conduct; and

(4) Comply with this article and applicable law.

(Ord. No. 86.73, § 1, 11-13-86; Ord. No. 88.32, § 5, 4-28-88; Ord. No. 95.48, 12-14-95)

Sec. 16A-59. Escort regulations, prohibited activities.

(a) The escort bureau shall provide to each patron a written contract and receipt of payment for services. The contract shall clearly state the type of services to be performed, the length of time such services shall be performed, the total amount of money such services shall cost the patron, and any special terms or conditions relating to the services to be performed.

(b) The escort bureau shall maintain an open office at the licensed location. The address of that office shall be included in all patron contracts and published advertisements. Private rooms or booths where the patron may meet with the escort shall not be provided at the open office or at any other location by the escort bureau.

(c) The escort bureau, in terms of licensing consequences, is responsible and liable for the acts of all its employees and subcontractors including but not limited to, any telephone receptionist, runner or escort who is referred or employed by that bureau while the escort is with the patron.

(d) It is unlawful for a licensee to provide escort services as described in this article to individuals under eighteen (18) years of age unless written authorization by a parent or legal guardian is issued to the escort when acting as such.

(e) An escort bureau shall:

(1) Maintain an open office at an established place of business;

(2) Not advertise, offer, solicit, agree to, or provide sexual conduct to a patron; and

(3) Employ or provide only escorts who possess escort identification cards.

(Ord. No. 86.73, § 1, 11-13-86; Ord. No. 88.32, § 5, 4-28-88; Ord. No. 95.48, 12-14-95)

Sec. 16A-60. Open office requirements.

To qualify as an open office it is required that:

(1) Business hours be established and posted and that the office be open to the public and patrons or prospective patrons during such business hours and that the office be accessible to business invitees, business license officials and law enforcement officers through a security system during all other hours that escorts are working;

(2) The office be managed by the owner or a management employee of the owner having authority to bind the bureau to escort and patron contracts and adjust patron and consumer complaints;

(3) All telephone lines and numbers listed to the escort bureau, or advertised as escort bureau numbers, terminate at the open office and at no other location;

(4) An index of all employees and escorts be kept in the open office; and

(5) All business records be kept in the open office including records of escort calls and referrals, stating the name and address, including hotel or motel room, of the patron, the date and time of referral, name of escort sent and whether the referral resulted in an escort service and the total fee received from the patron, if any.

(Ord. No. 95.48, 12-14-95)

Sec. 16A-61. Advertising without a license.

It is unlawful to advertise or hold out to the public the availability of an escort or escort bureau without obtaining a license therefor as provided in this article, whether the actual business of escorts or escort bureau as defined in this article is performed. The escort bureau license number must be prominently displayed in such advertisements.

(Ord. No. 95.48, 12-14-95)

Sec. 16A-62. Application for escort bureau license; contents; required fees.

(a) An applicant for an escort bureau license shall file an application with the licensing officer accompanied by a nonrefundable application fee.

(b) Unless otherwise provided in this article, the application shall contain the name and address of the activity and the following information about the applicant, any person financially interested in the activity to be licensed, any authorized local agents, any managing employee of the activity to be licensed, any escort or escort bureau runner:

(1) The name, including any aliases, business trade names or styles;

(2) Present residence and business addresses and telephone numbers, as applicable;

(3) Each residence and business address for the five (5) year period immediately preceding the date of filing of the application and the inclusive dates of each such address;

(4) Arizona driver's license;

(5) Valid proof of age and that the applicant is at least eighteen (18) years of age;

(6) Height, weight, color of eyes and hair and date of birth;

(7) Two (2) current two (2) inch x two (2) inch photographs;

(8) The business, occupation or employment history for the three-year period immediately preceding the date of the filing of the application;

(9) Information as to whether such individual or business has ever been refused any similar license or permit or has had any similar license or permit issued to such individual or business in the city or elsewhere revoked or suspended and the reason or reasons therefor;

(10) All prior criminal convictions excepting minor traffic offenses;

(11) The applicants and agents shall submit a full set of fingerprints to the Tempe police department for the purpose of obtaining a state or federal, or both, criminal records check pursuant to A.R.S. § 41-1750 and Public Law (PL) 92-544. The Department of Public Safety is authorized to exchange this fingerprint data with the Federal Bureau of Investigation. Fingerprints must be submitted on fingerprint cards provided by the finance and technology director or designee;

(12) If the applicant is a corporation, the name of the corporation shall be set forth exactly as shown in its articles of incorporation or charter, together with the state and date of incorporation, and the names, residence addresses, and dates of birth of each of its current officers and directors, and each stockholder holding more than five percent (5%) of the stock in the corporation. If the applicant is a partnership, the applicant shall set forth the names, residence addresses and dates of birth of each of the partners, including limited partners and profit interest holders. If the applicant is a limited partnership, the applicant shall furnish a copy of the certificate of limited partnership. If one or more of the partners is a corporation, the provisions of this subsection pertaining to corporations shall apply. The corporation or partnership applicant shall designate one of its officers or general partners to act as its responsible managing officer. Such designated person shall complete and sign all application forms required of an individual applicant under this article, but only one application fee shall be charged; and

(13) A description of any service to be provided together with a declaration that the services to be provided shall not involve those of a sexually oriented escort or escort bureau.

(c) The licensing officer shall have a reasonable period of time in which to investigate the application and background of the applicant and process the application through various city departments.

(d) The licensing officer shall grant the license upon the following circumstances:

(1) The required fees have been paid;

(2) The application, applicant and activities conform in all respects to the provisions of this article, the ordinances of the city and laws of the state;

(3) The applicant has not made a material misrepresentation of fact in the application;

(4) The applicant has provided in a timely manner all information required herein or reasonably necessary for issuance of the license;

(5) Neither the applicant, if an individual, nor any person financially interested if a corporation, nor any of the partners, including limited partners, nor the holder of any profit interest, nor the manager or other person principally in charge of the operation of the existing or proposed escort bureau, nor any individual employed or contracted with to as an escort, escort bureau runner or to provide escort services has been convicted of, pleaded nolo contendere to or guilty to any felony, or to a misdemeanor involving moral turpitude, within five (5) years prior to the issuance of the license. This section shall be inapplicable to an individual whose civil rights have been restored in accordance with law, unless the conviction involves a criminal violation of this article;

(6) The applicant has not had a license similar to the one issued pursuant to the provisions of this article issued by another authority, suspended or revoked within the five (5) year period immediately preceding the date of the filing of the application;

(7) Neither the applicant or the licensee is delinquent in payment to the city of taxes, fees, fines or penalties assessed against or imposed upon the applicant or licensee arising out of any business activity owned or operated by the applicant or licensee;

(8) The escort bureau complies with all applicable laws of the city, the county and state; and

(9) The applicant, manager or other person principally in charge of the operation of the business is at least eighteen (18) years of age.

(e) The licensing officer shall deny the license application if all of the requirements set forth in paragraphs (1) through (9) of subsection (d) have not been met. In the event of denial, the applicant shall be notified by mail of the denial and the reasons therefore. The applicant may appeal such denial to the city manager by filing with the city clerk an appeal within ten (10) days of the date of denial. The decision of the city manager shall be final.
(Ord. No. 86.73, § 1, 11-13-86; Ord. No. 88.32, § 5, 4-28-88; Ord. No. 95.48, 12-14-95; Ord. No. 2002.25, 8-1-02; Ord. No. 2010.02, 2-4-10)

Sec. 16A-63. Escort license identification card.

Each escort bureau licensee shall be issued identification cards in its name and in the names of each person who shall engage in the activity of an escort or escort runner on its behalf. The card shall contain the name, license number and license date of the escort bureau, and the name and photograph of the escort or escort bureau runner. This card must be carried on the person of any escort, escort bureau runner, or other individual while such person is engaged in the activity of an escort within the city. Such identification card shall be displayed upon request of any city officer or other law enforcement official.
(Ord. No. 86.73, § 1, 11-13-86; Ord. No. 88.32, § 5, 4-28-88; Ord. No. 95.48, 12-14-95)

Sec. 16A-64. License term, nontransferability.

The term of a license issued pursuant to the provisions of this article is one calendar year. All licenses issued pursuant to this article are nontransferable.
(Ord. No. 86.73, § 1, 11-13-86; Ord. No. 88.32, § 5, 4-28-88; Ord. No. 95.48, 12-14-95)

Sec. 16A-65. Information update.

Any changes in information required to be submitted by this article must be given to the licensing officer within ten (10) days of any such change.
(Ord. No. 86.73, § 1, 11-13-86; Ord. No. 88.32, § 5, 4-28-88; Ord. No. 95.48, 12-14-95)

Sec. 16A-66. Renewal of licenses.

Any license issued pursuant to the provisions of this article, which has not been suspended or revoked, and no violations of this article, city ordinances or state law have occurred in the determination of the licensing officer, may be renewed for a period of not to exceed one year on written application to the licensing officer made at least thirty (30) days prior to the expiration date of the current valid license. The renewal application shall be on a form provided by the licensing officer and shall contain all of the information and processing required by § 16A-62 if the licensing officer determines that any violations or complaints of violation of this article have occurred or been made to the city, or unless otherwise waived by the licensing officer.
(Ord. No. 95.48, 12-14-95)

Sec. 16A-67. Fees.

A nonrefundable application fee in the amount set by the city council shall accompany each application for an escort, escort service bureau or introductory service. Upon approval the license fee as set by the council by resolution shall be assessed. The annual license fee may be pro-rated to one-half (1/2) the amount required if the proposed licensee will be open for business only after July 1.
(Ord. No. 86.73, § 1, 11-13-86; Ord. No. 88.32, § 5, 4-28-88; Ord. No. 95.48, 12-14-95)

See. 16A-68. Revocation of license, grounds and procedure; appeal.

(a) Any license issued pursuant to this article shall be revoked upon any one or more of the following grounds committed by a licensee, employee, agent, escort, escort runner, or other person connected or associated with the license as a partner, director, officer, stockholder or manager, or any "person financially interested" as defined herein:

(1) Violation of any provision of this article in conducting an activity licensed under the provisions of this article;

(2) Giving false information or making a material misrepresentation of fact in the application for any license required in this article;

(3) Delinquency in payment to the city of taxes or fees;

(4) Conviction, subsequent to the issuance of any license of a crime which is either a felony or a misdemeanor involving moral turpitude or has offered or agreed to or rendered the service of a sexually oriented escort; or

(5) The licensee is a corporation or business entity and is not or is no longer qualified to transact business in the State of Arizona.

(b) To revoke a license, the licensing officer shall notify the licensee in writing by mail to the address as shown on the application or otherwise more recently of record, that said license or permit is revoked. The cause for such revocation shall be set forth in the notice. Service shall be complete upon mailing to the address of record, in the office of the licensing officer.

(c) Except as otherwise provided in this article, the license shall terminate if the licensee fails to pay any license fee owed either when due or by the end of any renewal period.

(d) Appeals from the revocation or termination of a license as provided for in this article may be appealed to the city manager by filing an appeal with the city clerk within ten (10) days after the date of the revocation or termination. The decision of the city manager shall be final.

(e) A revoked license shall be surrendered to the licensing officer on demand at the expiration of the appeals process.
(Ord. No. 86.73, § 1, 11-13-86; Ord. No. 88.32, § 5, 4-28-88; Ord. No. 95.48, 12-14-95)

Sec. 16A-69. Applicability of regulations to existing businesses.

The provisions of this article shall be applicable to all persons and activities described herein whether the herein described activities were established before or after the effective date of the ordinance enacting this article into law.
(Ord. No. 86.73, § 1, 11-13-86; Ord. No. 88.32, § 5, 4-28-88; Ord. No. 95.48, 12-14-95)

Sec. 16A-70. Nonprofit corporation or organization exemptions.

An organization which is qualified for exemption from taxation of income under A.R.S. § 43-1201, paragraph 1, 2, 4, 5, 6, 7, 10 or 11, and all professions, occupations and businesses which are licensed by the State of Arizona or any political subdivision thereof pursuant to a specific statute or ordinance, and all employees employed by a business so licensed, and which perform an escort, runner or escort bureau function as a service merely incidental to the primary function of such organization, profession, occupation or business and which do not hold themselves out to the public as an escort, runner or escort bureau, are exempt from licensing pursuant to this article. Any employment agency, licensed by the state which provides escorts as defined herein, must, however, obtain a license as required by this chapter.
(Ord. No. 86.73, § 1, 11-13-86; Ord. No. 88.32, § 5, 4-28-88; Ord. No. 95.48, 12-14-95)

Secs. 16A-71—16A-74. Reserved.

ARTICLE IV. AFTER-HOURS ESTABLISHMENTS

Sec. 16A-75. Definitions.

For the purpose of this article, the following terms shall have the meanings respectively ascribed to them in this section unless the context clearly requires otherwise:

After-hours activity means any of the following which are open to patrons during the hours of 2:30 a.m. to 6:00 a.m. and where dancing occurs:

(1) dance hall; or

(2) premises of a state on-sale retailer liquor licensee.

After-hours establishment means any place where an after-hours activity occurs or is provided. The term includes the building or pavilion or other place where the after-hours activity takes place, together with all surrounding premises used for parking or surrounding premises used for any other purpose relating to the after-hours activity.

Control means the power to direct or cause the direction of the management and policies of an applicant, licensee or controlling person, whether through the ownership of voting securities or a partnership interest, or by agreement or otherwise. Control is presumed to exist if a person has the direct or indirect ownership of or power to vote ten percent (10%) or more of the outstanding voting securities of the applicant, licensee or controlling person or to control in any manner the election of one or more of the directors of the applicant, licensee or controlling person. For the purposes of determining the percentage of voting securities owned, controlled or held by a person, the voting securities of any other person directly or indirectly controlling, controlled by or under common control with the other person, or by an officer, partner, employee or agent of the person or by a spouse, parent or child of the person. Control is also presumed to exist if a creditor of the applicant, licensee or controlling person holds a beneficial interest in fifty percent (50%) or more of the liabilities of the licensee or controlling person.

Controlling person means a person directly or indirectly possessing control of an applicant or licensee.

Dance hall means any establishment or location where social dancing occurs and a patron pays an admittance fee or minimum charge.

Licensing officer means the director of the internal services department of the city or his designee.

Owner means the owner of record, as shown by the records in the office of the county assessor, of the premises where an after-hours establishment is located. “Business owner” means any legal owner of an after-hours establishment or activity.

Person means any individual, firm, corporation, partnership, company, association, business trust, government entity, and any other form of multiple organization.

Premises of a state on-sale retailer liquor licensee means any area from which a person holding any state on-sale retailer liquor license or a special event liquor license is authorized to sell, dispense or serve spirituous liquor.
(Ord. No. 91.16, 4-29-91; Ord. No. 91.26, 8-22-91; Ord. No. 2001.17, 7-26-01; Ord. No. 2005.32, 6-2-05; Ord. No. 2010.02, 2-4-10; Ord. No. O2014.27, 6-26-14)

Sec. 16A-76. Applicability, provisions cumulative.

(a) The provisions of this article shall apply to all after-hours activities, establishments and persons as defined herein, whether such activities were commenced before, on or after the effective date of this article.

(b) The provisions of this article shall be in addition to any other regulations, privilege or license taxes or permit requirements required by the city, the state or other applicable agency and cumulative to any other applicable regulations, procedures or penalties.
(Ord. No. 91.16, 4-29-91)

Sec. 16A-77. License required.

(a) It is unlawful for any person to own, manage, operate or provide an after-hours activity or an after-hours establishment without first obtaining and maintaining in effect an after-hours establishment license as required by this article.

(b) It is unlawful for any person licensed as provided in this article to operate under any name or conduct business under any designation not specified in the license.
(Ord. No. 91.16, 4-29-91)

Sec. 16A-78. Application.

(a) Any person desiring to obtain an after-hours establishment license shall make application to the licensing officer who shall refer such application to the chief of police and community development director and any other interested department for appropriate investigation. The application shall be in such form as prescribed by the licensing officer and shall be fully completed before processing by the licensing officer. The application must be submitted at least forty-five (45) days prior to the proposed date of providing any after-hours activity.

(b) The application shall include a description of the proposed after-hours activity and shall include, but not be limited to, the following information set forth in this subsection. Paragraphs (1) through (9) below are required to be completed about the applicant, the business owner, the licensee if not the applicant or the business owner, the agent responsible for managing the premises on a day to day basis (hereinafter "managing agent") and any controlling person as defined herein:

(1) Full legal name and any name by which the person is or has been known;

(2) Current home address and telephone number and addresses over the past five (5) years;

(3) Driver's license number;

(4) Birth date, height, weight, hair and eye color;

(5) Business occupation and employment history for five (5) years;

(6) License history, including issuance, revocation, suspension or termination of any current or past state liquor licenses, the liquor license number and managing agent; permits; professional or business license;

(7) The applicants and agents shall submit a full set of fingerprints to the Tempe police department for the purpose of obtaining a state or federal, or both, criminal records check pursuant to A.R.S. § 41-1750 and Public Law (PL) 92-544. The Department of Public Safety is authorized to exchange this fingerprint data with the Federal Bureau of Investigation. Fingerprints must be submitted on fingerprint cards provided by the finance and technology director or designee.

(8) Listing of any prior felony or misdemeanor convictions except minor traffic violations;

(9) Documentation of age over eighteen (18) years;

(10) Designation of the managing agent who will be managing or operating the after-hours activity at the indicated location and proof of the managing agent's authorization to act on behalf of any corporation or organization;

(11) Name, address and telephone number of any other local agent authorized to conduct daily business and proof of authority to act on behalf of the prospective licensee;

(12) Name, address and telephone of statutory agent in Arizona if a corporation or an out-of-state applicant, licensee or owner;

(13) Except for corporations listed on the major stock exchanges, the names and addresses of all persons financially interested in the business. If a person financially interested in the business of the prospective licensee is a corporation, the names and addresses of all persons financially interested in that corporation shall be provided;

(14) The names and addresses of any controlling persons as defined herein. If the controlling person is a corporation, the names and addresses of all persons having control of the controlling corporation shall be provided;

(15) A plan of operation to ensure compliance with § 16A-87 and applicable provisions of this article;

(16) Evidence of current, valid privilege license issued by the city;

(17) Evidence of current, valid use permit or any other applicable zoning approval for the proposed activity issued by the city;

(18) Legal description and location of the premises and lot where the proposed activity will take place, submitted on a map drawn to scale, at least eight and one-half by eleven inches, showing the dimensions of the property and the name and width of all internal and abutting streets, roads or alleys, any existing buildings, fences and easements, with distances to property lines;

(19) Floor plan containing an accurate drawing to scale depicting the interior plan and layout of the premises;

(20) A vicinity ownership map showing and labelling all lots within three hundred (300) feet of the exterior boundaries of the lot on which the establishment is located. The three hundred (300) foot measurement shall exclude any public property or public rights-of-way;

(21) A vicinity ownership list, and mailing labels properly addressed, containing names and mailing addresses, with correct zip codes, of owners of all parcels required to be shown on the vicinity ownership map. The owners shall be as shown on the last assessment of the property by the county;

(22) A complex/center tenant list, and mailing labels properly addressed, containing names and mailing addresses, with correct zip codes, of tenants which share the site with the proposed licensee as to use of common points of ingress and egress or common parking areas or facilities; and

(23) Such other information as may be requested by the licensing officer to determine the truth of the information required to be set forth above.

(c) Any change in ownership of the business or in the information required to be provided in paragraphs (1), (10), (11), (12), (13) or (19) above shall be reported to the licensing officer within ten (10) calendar days after the change. Such changes shall be subject to investigation and approval by the city as provided in subsection (d) hereof and, if disapproved, the disapproval shall be grounds for termination of the license as provided in § 16A-85 of this code. The requirement for reporting changes as required herein is effective at all times during the city's consideration of the application and at all times when a license issued hereunder is in effect. All other information set out above must be updated at the time of the renewal of the license.

(d) Any change in the plan of operation in paragraph 15 above must be approved by the city prior to the change becoming effective. Failure to comply with an approved plan of operation shall constitute grounds for termination of the license as provided in § 16A-85.

(e) The police department shall conduct an investigation of the application and background of the applicant and proposed licensee. Based on such investigation, the police department shall recommend to the licensing officer the approval or denial of the license. In addition, the community development department and fire medical rescue department, and any other affected department, may inspect any premises proposed as the site of the establishment

and may make separate recommendations to the licensing officer concerning compliance with the provisions of this article and applicable codes. The licensing officer shall make a recommendation as to issuance or denial of the license, including any conditions recommended or applicable to the license or licensee, and transmit the recommendation to the city council.
(Ord. No. 91.16, 4-29-91; Ord. No. 97.20, 4-10-97; Ord. No. 2001.17, 7-26-01; Ord. No. 2002.25, 8-1-02; Ord. No. 2005.32, 6-2-05; Ord. No. 2010.02, 2-4-10; Ord. No. 2014.14, 3-20-14)

Sec. 16A-79. Application fee and license fee.

(a) The application shall be accompanied by a nonrefundable application fee established by the city council (see Appendix A).

(b) The license fee shall be established by the city council (see Appendix A).

(c) The annual license fee for an initial license may be pro-rated to one-half the amount required herein if the proposed licensee will be open for business only during the last half of the calendar year, that is, after July 1.
(Ord. No. 91.16, 4-29-91)

Sec. 16A-80. Grounds for denial.

The following include, but are not limited to, grounds for denial of an application for after-hours establishment license:

(1) The applicant, or proposed conduct of the after-hours activity, fails to meet the requirements of this article or any applicable provision of this code or law;

(2) The applicant or conduct of the proposed after-hours activity will not conform or comply with laws and regulations;

(3) The applicant does not have an acceptable plan for compliance with § 16A-87 of this article on requirements for operation;

(4) The applicant is a corporation which is not qualified to transact business in this state;

(5) Misrepresentations or material misstatements are made in the application;

(6) Harm to the public health, safety or welfare of the community, or clear or present danger of serious damage or danger to the public, would result from granting the license; or

(7) A business owner, or a managing agent, an applicant, other managing employee or a controlling person in the business to be licensed has been convicted of:

a. a felony; or

b. a misdemeanor which relates to the activity to be licensed, or has, within two (2) years preceding the date of the issuance of a license, violated any of the provisions of this article or the city code while conducting an after-hours activity or establishment.

(Ord. No. 91.16, 4-29-91)

Sec. 16A-81. Public hearing on license, notice.

(a) The city council shall hold a public hearing on the application.

(b) Notice of the hearing shall be given at least thirty (30) days prior to the hearing in the following manner:

(1) Notice shall be published at least once in a newspaper of general circulation in the city;

(2) Notice shall be posted on the affected property in such a manner as to be legible from the public right-of-way;

(3) Notice shall be mailed by first class mail to each owner and tenant as provided in paragraphs (21) and (22) of § 16A-78; and

(4) Notice shall be mailed by first class mail to the chairperson of the registered neighborhood associations and homeowners associations within the vicinity.

(c) At the public hearing, the council may adopt the recommendation of the licensing officer or may render any other decision, including but not limited to conditions applicable to the licensee.
(Ord. No. 91.16, 4-29-91; Ord. No. 2005.32, 6-2-05)

Sec. 16A-82. Display of license.

A licensee shall display such license in a conspicuous place in the after-hours establishment.
(Ord. No. 91.16, 4-29-91; Ord. No. 2005.32, 6-2-05)

Sec. 16A-83. Transferability, automatic termination of license.

(a) Licenses issued hereunder are not transferable.

(b) The following shall result in automatic termination of an after-hours establishment license:

(1) Any change in location of a licensed after-hours establishment;

(2) Upon the sale or transfer of any interest in the after-hours establishment; or

(3) Upon the revocation or termination of any use permit or other zoning approval issued by the city relating to the after-hours activity.

(c) A new application may be made by the person whose license is terminated as provided in this section, or by another person desiring to own or operate an after-hours establishment. As used in this section, a transfer of more than fifty percent (50%) of the stock or ownership of the business of a licensee is a prohibited transfer of a license as prescribed in this section.
(Ord. No. 91.16, 4-29-91)

Sec. 16A-84. Renewal, appeals from denial.

(a) Annually, at least thirty (30) days prior to the first day of January of each year, a licensed after-hours establishment shall apply to the licensing officer for renewal of the after-hours establishment license. Application shall be made and reviewed as an original application except that:

(1) No application fee is payable on a renewal application; and

(2) Public hearing and notice as required in § 16A-81 shall be conducted only if required by the licensing officer.

(b) Appeals from the denial of a renewal license application may be taken to the city council by filing a written notice of appeal with the city clerk within seven (7) calendar days after the date of the decision of the licensing officer denying the renewal license. The city council may affirm, deny, modify or otherwise amend the decision of the licensing officer. The city council's decision is final.
(Ord. No. 91.16, 4-29-91)

Sec. 16A-85. Grounds for termination, hearing.

(a) In addition to the automatic termination of a license as provided in this article, the license may be revoked, suspended or denied renewal for any one or more of the following grounds:

(1) The licensee is guilty of fraud in conducting the business or deceit in obtaining a license to conduct the business;

(2) The licensee has been convicted in a court of competent jurisdiction of a felony or of any misdemeanor which relates to the licensed activity;

(3) The licensee is guilty of untrue, fraudulent, misleading or deceptive advertising;

(4) The licensee is grossly ignorant of or guilty of wilful negligence in the business of the after-hours establishment;

(5) The licensee has violated any of the provisions of §§ 16A-78, 16A-87 or 16A-88 or any other provision of this article or the city code;

(6) The licensee fails to comply with the terms of the plan of operation as approved by the city;

(7) There occurs on the premises repeated acts of violence or disorderly conduct;

(8) The licensee or any employee or managing agent thereof fails or refuses to make the premises or records available for inspections and examination as provided in this article;

(9) The licensee knowingly files an application or other document with material information which is false or misleading or knowingly gives testimony in an investigation or other proceeding which is false or misleading;

(10) The licensee is delinquent for more than ninety (90) days in the payment of any applicable taxes to the city;

(11) The licensee fails to take reasonable steps to protect the safety of a customer of the licensee entering, leaving or remaining on the licensed premises when the licensee knew or should have known of the danger to such person, or the licensee fails to take reasonable steps to intervene by notifying law enforcement officials or otherwise to prevent or break up an act of violence or an altercation occurring on the licensed premises or immediately adjacent to the premises when the licensee knew or reasonably should have known of such acts of violation or altercations;

(12) The licensee, his managing agent, a controlling person or other managing employee knowingly associates with a person who has engaged in racketeering, as defined in A.R.S. § 13-2301, or has been convicted of a felony and the association is of such a nature to create a reasonable risk that the licensee will fail to conform to the requirements of this article or any criminal statute of this state; or

(13) Any enlargement or expansion of the premises or of the after-hours activity without appropriate approvals from the city.

(b) To suspend or revoke a license, the licensing officer shall deliver or mail by certified mail to the business address as shown by the license application, or to the last reported business address shown in a renewal or other report, a written notice that such license is suspended or revoked. The reason for the suspension or revocation shall be set forth in the notice and the provisions of subsection (c) hereof on hearing and appeal rights. A suspended or revoked license shall be surrendered to the licensing officer on demand.

(c) The licensing officer shall grant on demand to any licensee whose license has been revoked or suspended a full hearing on the merits of such suspension or revocation. Appeal of the licensing officer's decision to the city council shall be made within seven (7) calendar days after the receipt of the licensing officer's notice of suspension or revocation, and failure to demand a hearing within such time will constitute full waiver. The decision of the council is final.
(Ord. No. 91.16, 4-29-91)

Sec. 16A-86. Application after denial or termination.

No person may apply for an after-hours establishment license within one year from:

(1) The denial of any such license to the applicant; or

(2) The suspension, revocation, termination or non-renewal of such license unless the cause of the denial, suspension, termination, revocation or nonrenewal has been, to the satisfaction of the licensing officer, removed in such time.

(Ord. No. 91.16, 4-29-91)

Sec. 16A-87. Requirements for operation of establishment, plan of operation required.

(a) An after-hours establishment shall comply with this article and all applicable city and state laws and ordinances, including but not limited to fire and building and zoning codes. In addition, the following requirements apply:

(1) The hours during which the after-hours establishment may be open for conduct of after-hours activity shall be as specified in the after-hours establishment license issued by the city;

(2) Persons under eighteen (18) years of age are prohibited in an after-hours establishment;

(3) Written proof of identification shall be required for admission to an after-hours establishment to ensure compliance with paragraph (2) of this section. The following written instruments are the only acceptable types of identification:

a. An unexpired driver's license issued by any state, provided such license includes a picture of the licensee;

b. An identification license issued pursuant to state law;

c. An armed forces identification card;

d. A valid unexpired passport issued by a government which contains a photograph of the person and the date of birth;

(4) No person shall be admitted to, nor shall any person be allowed to remain on, the licensed premises who is or appears to be under the influence of spirituous liquor or drugs or who is disturbing the peace;

(5) No spirituous liquor may be furnished, sold, served or consumed at an after-hours establishment between 2:30 a.m. and 6:00 a.m. If the after-hours licensee holds a liquor license from the state, spirituous liquor service and consumption must terminate upon the hours as required by state law;

(6) Admittance and any admittance lines for entry to the establishment shall be closed at 3:00 a.m. or at such other time prescribed in the license issued by the city;

(7) Any parking used by patrons of the licensee, and any parking area of the licensee or within three hundred (300) feet of the licensed premises shall be supervised by the licensee to ensure that the parking areas are used by persons entering and exiting from their vehicles and are not used as a gathering place; and

(8) Applicant must have a current security plan pursuant to § 26-70 of this code.

(b) A plan which demonstrates how the licensee will ensure compliance with these regulations shall accompany the application and is subject to approval by the city. Any change in the plan of operation once approved must be submitted to the city for approval prior to the change becoming effective as provided in § 16A-78. A copy of the plan of operation shall be available at the after-hours establishment for inspection by the city during business hours and at other reasonable times. The plan shall include such information as required by the licensing officer, including identification of employees, agents or private contractors who are responsible for security and ensuring compliance with the terms of this article.
(Ord. No. 91.16, 4-29-91; Ord. No. 2005.32, 6-2-05)

Sec. 16A-88. Unlawful activities.

It is unlawful for any person or licensee at an after-hours establishment to:

(1) Operate without any required city or state permit or in violation of any applicable city or state law or ordinance;

(2) Admit persons under eighteen (18) years of age;

(3) Serve spirituous liquor or permit the consumption thereof at an after-hours establishment when prohibited in this article or state law;

(4) Employ any person who is under eighteen (18) years of age to work during the hours between 2:30 a.m. and 6:00 a.m.;

(5) Allow an intoxicated or disorderly person to come into or remain on the licensed premises, except that an intoxicated person may remain on the premises for no longer than thirty (30) minutes to arrange for transportation;

(6) Solicit or encourage, or allow an employee to solicit or encourage, to buy a patron anything of value, directly or indirectly, or for a patron to solicit or encourage to buy an employee anything of value, directly or indirectly;

(7) Knowingly permit unlawful possession, use, or sale of narcotics, dangerous drugs or marijuana;

(8) Knowingly permit prostitution or solicitation of prostitution;

(9) Knowingly permit unlawful gambling on the premises;

(10) Knowingly permit trafficking in stolen property;

(11) Fail or refuse to make the premises or records, or the plan required in § 16A-86 available for inspection as provided in this article; or

(12) Employ or permit a person to be employed on a salary, contract or commission basis for the purpose of dancing with patrons, except that this shall not apply to bona fide instructors of dancing regularly employed for the exclusive purpose of giving bona fide instructions for dancing.

(Ord. No. 91.16, 4-29-91; Ord. No. 2005.32, 6-2-05)

Sec. 16A-89. Investigation to determine violation, requests for investigation.

The police chief or the licensing officer or any of their agents may enter in a lawful manner the premises of an after-hours establishment or where an after-hours activity takes place and may attend, witness, visit and investigate any and all of the after-hours activities and any other activities therein and thereon. In addition, the police chief or the licensing officer or their agents may inspect in a lawful manner the after-hours establishment or the buildings and premises in which after-hours activities are carried on to determine whether or not there exist any violations of this article or the city code. The police chief or licensing officer may request any other department of the city to make an investigation to determine whether or not the after-hours activity is being operated in compliance with this article and ordinances of the city.

(Ord. No. 91.16, 4-29-91)

Sec. 16A-90. Penalty.

(a) A violation of this article is an offense, punishable as provided in § 1-7 of this code. Each day on which a violation continues shall be a separate offense.

(b) In addition to the punishments provided in this section, a violation of this article is grounds for revocation of the license as provided in § 16A-85.

(Ord. No. 91.16, 4-29-91)

Secs. 16A-91—16A-99. Reserved.

ARTICLE V. TELE-TRACK WAGERING FACILITY SITES

Sec. 16A-100. Definitions.

For the purposes of this article, unless the context otherwise requires, all words and phrases shall have the same meaning attributed to them as is provided in A.R.S. § 5-101 et seq.
(Ord. No. 91.45, 1-16-92)

Sec. 16A-101. State license required.

No person shall operate a tele-track wagering site within the city without first obtaining and properly maintaining in force a license for a racing meeting and pari-mutuel waging as required by A.R.S. § 5-101 et seq.
(Ord. No. 91.45, 1-16-92)

Sec. 16A-102. Tele-track wagering facility site permit.

A person holding a permit for horse, harness or dog racing meetings pursuant to A.R.S. §5-111 may apply for a tele-track wagering facility site permit from the city through the finance and technology director or his designee of the city.
(Ord. No. 91.45, 1-16-92; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Sec. 16A-103. Application.

(a) A person desiring to obtain a tele-track wagering facility site permit shall make application to the finance and technology director who shall refer such application to the community development department, police department and fire medical rescue department for appropriate recommendations. The application shall be in such form as prescribed by the finance and technology director and shall be fully completed before processing by the finance and technology director. The application must be submitted at least forty-five (45) days prior to the proposed date of providing tele-track wagering within the city; however, this provision may be waived by the finance and technology director

(b) The application shall include a description of the proposed tele-track wagering activity and shall include, but not be limited to, the required information set forth in this subsection.

(1) Full name and address of the applicant and owner/managing agent of the property on which the wagering facility is to be located;

(2) Proof of current permit from the Arizona Racing Commission to conduct tele-track wagering within the state;

(3) Proof of liquor license in effect for the site at which the tele-track wagering is to be located;

(4) Designation of managing agent of the applicant and managing agent of the owner of the property on which the tele-track wagering will be located;

(5) Name, address and telephone number of statutory agent in the state if either the applicant or the owner of the site is a corporation;

(6) A floor plan containing an accurate drawing to scale of all buildings upon the premises and the lot lines of the parcel on which the activity will take place;

(7) A vicinity ownership map showing and labeling all lots within three hundred (300) feet of the exterior boundaries of the lot on which the activity is to be located. The three hundred (300) foot measurement shall exclude any public property or public rights of way;

(8) A vicinity ownership list and mailing labels properly addressed, containing names and mailing addresses, with correct zip codes, of owners of all parcels required to be shown on the vicinity ownership map as depicted on the last assessment of property by Maricopa County; and

(9) A parking plan showing all parking spaces available upon the site for applicant's use.

(Ord. No. 91.45, 1-16-92; Ord. No. 97.20, 4-10-97; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10; Ord. No. 2014.14, 3-20-14)

Sec. 16A-104. Application fee and permit fee.

(a) The application shall be accompanied by a nonrefundable application fee as established by the city council (see Appendix A).

(b) The annual permit fee shall be established by the city council (see Appendix A).

The annual permit fee for an initial permit may be prorated on a monthly basis. The permit shall be valid from July 1 of each year through June 30 of the following year.
(Ord. No. 91.45, 1-16-92)

Sec. 16A-105. Public hearing on permit, notice.

(a) The city council shall hold a public hearing on the initial application for permit and notice of said hearing shall be given at least fifteen (15) days prior to the hearing in the following manner:

(1) Notice shall be published at least once in a newspaper of general circulation in the city;

(2) Notice shall be posted on the affected property in such a manner as to be legible from the public right-of-way; and

(3) Notice shall be mailed by first class mail to each owner and tenant as listed on the vicinity ownership list.

(b) After public hearing, the council may issue the permit with any conditions it deems necessary or deny said permit.
(Ord. No. 91.45, 1-16-92)

Sec. 16A-106. Display of permit, nontransferability.

Permittee shall display the permit set forth in this article in a conspicuous place within the facility. No permit shall be transferrable.
(Ord. No. 91.45, 1-16-92)

Sec. 16A-107. Renewal.

(a) Annually, at least thirty (30) days prior to the first day of July of each year, a permitted tele-track wagering facility site shall apply to the finance and technology director for renewal of the permit. Application shall be made and reviewed as an original application except that:

(1) No application fee is payable on a renewal application, except if said renewal application is not timely filed, a late fee in the sum of one hundred dollars ($100) shall be imposed; and

(2) Public hearing and notice shall be conducted only if required by the finance and technology director.

(Ord. No. 91.45, 1-16-92; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Sec. l6A-107.1. Secondary permit.

A person qualified pursuant to § 16A-101 may obtain a secondary tele-track wagering facility site permit for a period of time within a permit year which a current permittee (primary permittee) is not licensed by the state to conduct a racing meeting and pari-mutual wagering. Such secondary permit shall only be issued at the site and for the same type of tele-track wagering for which the primary permittee is licensed upon compliance with the following requirements:

(1) Furnish written permission from a person holding a valid tele-track wagering facility site permit for the use of the same facilities and site (primary permittee);

(2) Furnish written permission from the owner/managing agent of the property on which the tele-track wagering facility site permit is currently permitted;

(3) File an application with the finance and technology director containing all information set forth in § 16A-103 except subsection (b)(7) and (8);

(4) Pay the nonrefundable application fee as set forth in § 16A-104(a); and

(5) All other provisions of article V herein shall apply to the secondary permit with the exception of § 16A-105, and the finance and technology director may issue the permit upon the same terms and conditions as those issued to the primary permittee.

(Ord. No. 92.13, 6-18-92; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Sec. 16A-108. Revocation, hearing.

(a) A permit may be revoked if the operation at the facility site is not in the best interests of the city. The permit shall be revoked for any of the following:

(1) Any violation of the laws governing wagering within the state or the sale of liquor within the state;

(2) There occurs on the facility site repeated acts of violence or disorderly conduct;

(3) The permittee knowingly files an application or other documents with material information which is false or misleading or gives testimony in an investigation or other proceedings which is false or misleading; or

(4) The permittee is delinquent for more than thirty (30) days in the payment of any applicable taxes or fees to the city.

(b) To revoke a permit, the finance and technology director shall deliver or mail by certified mail to the business address as shown by the permit application a written notice that such permit is revoked. The reason for revocation shall be set forth in the notice together with the provisions of subsection (c) hereof on hearing and appeal rights. A revoked license shall be surrendered to the finance and technology director on demand.

(c) The finance and technology director shall grant on demand to any permittee or managing agent whose permit has been revoked a full hearing on the merits of such revocation. Appeal of the finance and technology director's decision to the city council shall be made within seven (7) calendar days after the receipt of the finance and technology director's notice of revocation, and failure to demand a hearing within such time will constitute full waiver. The decision of the council is final.
(Ord. No. 91.45, 1-16-92; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Sec. 16A-109. Unlawful to operate without permit.

It is unlawful for any person to operate or allow the operation of a tele-track wagering facility on any site within the city without first having obtained and maintain in force a permit as set forth in this article.
(Ord. No. 91.45, 1-16-92)

Secs. 16A-110—16A-111. Reserved.

ARTICLE VI. ADULT-ORIENTED BUSINESSES[4]

Sec. 16A-112. Purpose and intent.

(a) It is the purpose of this article to regulate adult-oriented businesses, to promote the public health, safety, and general welfare of the citizens of the city, and to avoid and mitigate the detrimental secondary effects of adult-oriented businesses through content neutral regulations.

(b) It is not the purpose of this article to impose a limitation or restriction on the content of any communicative materials, including sexually oriented materials, or to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market.

(c) This article is not intended to interfere with or suppress legitimate expression or any speech activities protected by the First Amendment to the United States Constitution nor is it intended to permit any use or activity which is otherwise prohibited or made punishable by law. (Ord. No. 95.49, 12-14-95)

Sec. 16A-113. Definitions.

For the purpose of this article, the following terms shall have the meaning respectively ascribed to them in this section unless the context clearly requires otherwise:

(1) A*dult cabaret* means a nightclub, bar, restaurant, or similar commercial business which regularly features:

a. Persons who appear in a "state of nudity";

b. Live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities"; or

c. Films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas".

(2) *Adult motel* means a hotel, motel or similar commercial establishment that:

a. Offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides or other photographic reproductions that depict or describe "specified sexual activities" or "specified anatomical areas" as one of its principal business purposes;

[4]**Cross reference**—Escorts, escort bureaus and introductory services, § 16A-56 et seq.

Editor's note—Ord. No. 95.49 required persons so engaged in the activities described to be in full compliance with the provisions of this article, including receipt of any license or permit required, within one hundred twenty (120) days from its effective date.

b. Offers a sleeping room for a period of time that is less than ten (10) hours; or

c. Allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than ten (10) hours.

(3) *Adult motion picture theater* means a commercial business where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown which are predominantly characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas".

(4) *Adult-oriented business* means the opening or commencement of, or the conversion of an existing business to, or the addition to any other existing business of, or the relocation of any of the following: "adult arcade", "adult retail store", "adult motion picture theater", "adult theater", "adult cabaret", "adult motel", "nude model studio", "adult service", "adult service business" and "adult video facility".

(5) *Adult-oriented business manager* means a person on the premises of an adult-oriented business who has overall supervisory authority over the operation of the business.

(6) *Adult retail store* in this article, means a commercial establishment which devotes more than one-third (1/3) of its total retail sales floor area to any of the following:

a. The sale or rental, for any form of consideration, books, magazines, periodicals, photographs, films, motion pictures, video cassettes or video reproductions, slides, or other printed or visual matter that predominantly depict or describe "specified sexual activities" or "specified anatomical areas";

b. The sale or rental of instruments, devices, or paraphernalia that are designed for use in connection with "specified sexual activities", excluding condoms and other birth control and disease prevention products; or

c. The regular exclusion of all minors from the premises because of the sexually explicit nature of the items sold, rented or displayed therein.

For the purpose of determining one-third (1/3) of the total retail sales floor area, display items shall be clearly separate from the remaining merchandise and shall not be visible from the remaining two-thirds (2/3) of the retail sales floor area, separated by a solid non-transparent partition, and shall not be visible from the exterior of the business.

(7) *Adult service* means a dance, performance or other activity, including, but not limited to, service of food or beverages, modeling, posing, wrestling, singing, reading, talking, or listening conducted for any consideration in an adult service business by a person who is nude during all or part of the time that the person is providing the service.

(8) *Adult service business* means a commercial establishment where any adult service is provided to patrons in the regular course of business and as one of the principal business purposes of the establishment, and includes, but is not limited to, a nude model studio as defined in this code.

(9) *Adult-oriented service provider* means any person who provides an adult service.

(10) *Adult video facility, adult theater or adult arcade,* referred to as *adult video facility* in this article, means a commercial establishment where, for any consideration, the public is permitted or invited wherein films, motion pictures, video cassette projections, slides, photographs or other visual media predominantly characterized by depiction of "specified sexual activities" or "specified anatomical areas" are shown electrically, mechanically or by other means in the regular course of business and as a business purpose of the establishment. *Adult video facility* does not include a theater where all viewing occurs in a common area with seating for fifty (50) or more persons.

(11) *Applicant* means a person or persons who has applied for an adult-oriented business license, an adult-oriented manager license or an adult-oriented service provider license.

(12) *Business day* means any day of the week when the license officer's office is open for the public to conduct the license officer's business.

(13) *Community development director* means the director of the community development department or designee.

(14) *Employ, employee* or *employment* describe and pertain to any person who performs any service on the premises of an adult-oriented business on a full-time, part-time or contract basis, whether or not the person is denominated an employee, independent contractor, agent or otherwise. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises.

(15) *Licensing officer* means the director of the internal services department of the city or designee.

(16) *License* means the license required by this article as a condition to operating an adult-oriented business or to engage in the activities of an adult-oriented service provider or adult-oriented business manager.

(17) *Licensee* means a person in whose name a license to operate an adult-oriented business has been issued, as well as each individual listed as an applicant on the application for a license.

(18) *Manager's station* means an area within an adult service business or an adult video facility where an adult-oriented business manager is located in the normal course of operations.

(19) *Nude model studio* means a place where the primary use involves a person who regularly appears in a "state of nudity", displays "specified sexual activities" or the exposure of "specified anatomical areas" and is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who transfer any form of consideration.

(20) *Nudity/state of nudity* means without opaque non-flesh colored fabric fully covering the human anus, pubic region, male genitals, female genitals, and female breasts below the top of the areola.

(21) *Operate* or *causes to be operated* means to cause to function or to put or keep in operation. *Operator* means any person who causes to function or who puts or keeps in operation an adult-oriented business. A person may be found to be operating or causing to be operated an adult-oriented business whether or not that person is an owner, part owner, or licensee of the business.

(22) *Patron* means a person invited or permitted to enter and remain upon the premises of an adult-oriented business, whether or not for a consideration.

(23) *Person* means an individual, firm, partnership, joint venture, association, corporation, estate, trust, receiver, syndicate, or broker, or any other form of legal entity.

(24) *Police chief* means the chief of police or designee.

(25) *Specified anatomical areas* means the human anus, pubic region, male genitals, female genitals, or female breast below the top of the areola that are less than completely and opaquely covered by non-flesh colored fabric; or human genitals in a state of sexual arousal, even if completely and opaquely covered.

(26) *Specified sexual activities* means actual or simulated sexual intercourse, masturbation, oral copulation, sodomy, flagellation, bestiality, fondling or other erotic touching of human genitals, pubic region, buttocks, anus or the female breast, or any combination thereof. As well as, human genitals in a state of sexual arousal or excretory functions as part of or in connection with any of the activities set forth herein.

(Ord. No. 95.49, 12-14-95, Ord. No. 97.20, 4-10-97; Ord. No. 2001.17, 7-26-01; Ord. No. 2004.42, 1-20-05; Ord. No. 2007.07, 2-1-07; Ord. No. 2010.02, 2-4-10; Ord. No. O2014.27, 6-26-14)

Sec. 16A-114. Classification.

An adult-oriented business shall be classified as follows:

(1) Adult retail store;

(2) Adult service business;

(3) Adult video facility, adult theater or arcade;

(4) Adult motel;

(5) Adult cabaret;

(6) Adult motion picture theater;

(7) Nude model studio; or

(8) Any combination of classifications set forth in paragraphs (1) through (7) above or similar ancillary activity.
(Ord. No. 95.49, 12-14-95; Ord. 2007.07, 2-1-07)

Sec. 16A-115. Administration.

(a) The administration of this article, including the duty of prescribing forms, is vested in the licensing officer, except as otherwise specifically provided. The police chief and the community development director shall render assistance in the administration and enforcement of this article as follows:

(1) Police chief shall make police department facilities and personnel available to fingerprint an applicant for a license. The cost of fingerprinting shall be paid by the applicant at the time the service is provided. Records of fingerprints so obtained shall be maintained at the police department;

(2) Police chief shall have a criminal history inquiry conducted on all persons listed as applicants in a license application. The inquiry shall be limited to determining whether an applicant for a license has a criminal conviction of the type described and for the period indicated in § 16A-117(d)(8) of this article. The police chief shall notify the licensing officer in the event such criminal conviction is found to exist;

(3) Community development director shall notify the licensing officer whether an applicant or a licensee in a license application has failed to comply with or is in violation of applicable provisions of the Zoning and Development Code, or the building codes, development standards or other land use ordinances and regulations of the city relating to the business to be operated under the license;

(4) Nothing herein is intended to prohibit or restrict the police chief or the community development director from providing additional assistance as may derive from their normal duties and responsibilities or as may be requested by the licensing officer. In no event shall any assistance as described herein, or the absence of such assistance, delay or extend the time period specified in § 16A-125 for the licensing officer to act on a license application; and

(5) The licensing officer shall take photographs of each applicant. Photograph fees must be paid at the time initial application is submitted. Initial or replacement photograph fees shall be established by city council (see Appendix A).

(b) An application for a license or for the renewal of a license made pursuant to this article shall be submitted to the licensing officer who shall grant or deny the application in accordance with the provisions of this article. The licensing officer shall also suspend or revoke a license in accordance with the provisions of this article.

(c) A license issued pursuant to this article shall expire on December 31 of the year in and for which it is issued and may be renewed annually.

(d) A license, if granted, shall state on its face:

(1) The name of the licensee;

(2) The name and address of the licensed premises;

(3) The particular classification or classifications of adult-oriented business for which the license is granted; and

(4) The license number.

(Ord. No. 95.49, 12-14-95; Ord. No. 97.20, 4-10-97; Ord. No. 2001.17, 7-26-01; Ord. No. 2004.42, 1-20-05; Ord. No. 2007.07, 2-1-07; Ord. No. 2010.02, 2-4-10)

Sec. 16A-116. Adult-oriented business license required.

(a) It shall be unlawful for a person to operate an adult-oriented business without a valid license issued pursuant to this article for the particular classification of adult-oriented business sought to be operated.

(b) It shall be unlawful for a person to operate an adult-oriented business under any name or designation, or under any premises name or designation, or at any premises address not specified in a valid license issued pursuant to this article. Each additional premises sought to be operated as an adult-oriented business shall require a separate license.

(c) It shall be unlawful for any operator of an adult-oriented business to hire or engage any provider or manager who does not hold a valid license.

(d) A valid license for the adult-oriented business being conducted shall be displayed on the premises in such manner as to be readily visible to patrons.

(Ord. No. 95.49, 12-14-95; Ord. No. 2007.07, 2-1-07)

Sec. 16A-117. Application for adult-oriented business license.

(a) A person who wishes to operate an adult-oriented business shall submit an application and fees for a license to the licensing officer as required by this article. The application shall be on a form prescribed by the licensing officer and obtainable from the licensing officer. The application shall include a current photograph and the fingerprints of each applicant. An application shall be deemed filed with the city when the licensing officer has received the required fees, a completed application with all information required in subsection (d), and the photograph and fingerprints of each applicant.

(b) The applicants shall submit a full set of fingerprints to the police department for the purpose of obtaining a state or federal, or both, criminal records check pursuant to A.R.S. § 41-1750 and Public Law (PL) 92-544. The Department of Public Safety is authorized to exchange this fingerprint data with the Federal Bureau of Investigation. Fingerprints must be submitted on fingerprint cards provided by the licensing officer.

(c) If a person who wishes to operate an adult-oriented business is an individual, that individual must be listed in the application for the license as applicant and also as the licensee. If a person who wishes to operate an adult-oriented business is a legal entity other than an individual, each officer or general partner of the entity, and any other individual who will participate directly in decisions relating to management of the adult-oriented business, must be listed in the application as an applicant. Each applicant shall provide his photograph and fingerprints as provided in subsections (a) and (b) above and shall provide under oath the information called for in paragraphs (4) through (8) of subsection (d) below as it applies to each such applicant.

(d) The application shall be deemed complete if it contains the following information:

(1) The name, premises address, business mailing address if different from the premises address, and phone number of the proposed adult-oriented business;

(2) The name, address and phone number of the designated applicant;

(3) Where the person seeking to operate the adult-oriented business is other than an individual, the state and date of formation of the business;

(4) Each applicant's full true name and any other names, aliases or stage names used in the preceding five (5) years;

(5) Each applicant's current residential mailing address and telephone number. This information shall be supplemented in writing to the licensing officer by letter postmarked not later than ten (10) days after any change in this information;

(6) Written proof of each applicant's age, in the form of either a current driver’s license with picture or other picture identification document issued by a governmental agency;

(7) The issuing jurisdiction and the effective date of any license relating to the operation of an adult-oriented business or relating to the provision of any adult services which is held or has been held at any time by any applicant or by the designated licensee, whether any such license has been revoked or suspended, and the reason or reasons therefor;

(8) If less than five (5) years has elapsed since the date of the last conviction, or the date of release from confinement for the last conviction, whichever is later, of any applicant or of the licensee for a sexual offense described in A.R.S. § 13-1401 through § 13-1416, a racketeering offense as defined in A.R.S. § 13-2301.D.4, an extortion offense as defined in A.R.S. § 13-1804, a money laundering offense as defined in A.R.S. § 13-2317, a prostitution offense described in A.R.S. § 13-3201 through § 13-3214, a drug offense described in A.R.S. § 13-3401 through § 13-3416, or a sexual exploitation of children offense described in A.R.S. § 13-3551 through § 13-3556, or incest and other offenses against minors described in A.R.S. § 13-3608, A.R.S. § 13-3612 through § 13-3618 and A.R.S. § 13-3619, or for facilitation, attempt, conspiracy or solicitation to commit any of the foregoing offenses, or any conviction in

another jurisdiction for conduct which if carried out in Arizona would constitute an offense stated in this paragraph. The fact that a conviction is being appealed shall not affect the requirements of this paragraph;

(9) The name and address of the statutory agent or other agent authorized to receive service of process;

(10) The name(s) of the adult-oriented business manager(s) who will have actual supervisory authority over the operation of the business. This information shall be supplemented in writing to the licensing officer by letter postmarked not later than ten (10) days after any change in this information;

(11) An accurate, to scale floor plan or diagram of the business premises clearly showing the configuration of the premises, including a statement of total floor space occupied by the business, the place at which the license will be conspicuously posted, if granted, the location of all manager's stations and overhead lighting fixtures, and clearly designating all portions of the premises in which patrons will not be permitted. Each diagram should be oriented to the north or to some designated street or object and shall be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six inches. The licensing officer may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared;

(12) A certification that the adult-oriented business does not violate the locational requirements of § 16A-133 of this code; and

(13) Any additional information or documentation as may be requested by the licensing officer to process the application.

(Ord. No. 95.49, 12-14-95; Ord. No. 97.20, 4-10-97; Ord. No. 2001.17, 7-26-01; Ord. No. 2001.18, 7-26-01; Ord. No. 2002.25, 8-1-02; Ord. No. 2007.07, 2-1-07)

Sec. 16A-118. Adult-oriented business manager license.

(a) A person may not serve as an adult-oriented business manager unless the person has first secured an adult-oriented business manager license under this article.

(b) Application for an adult-oriented business manager license shall be made in the same manner as an application for a adult-oriented business license, except that the applicant need provide only the information called for in paragraphs (4) through (8) of § 16A-117(d), along with current photograph, fingerprints and payment of all fees.

(Ord. No. 95.49, 12-14-95; Ord. No. 2007.07, 2-1-07)

Sec. 16A-119. Adult service provider license.

(a) A person may not work as an adult service provider in the city unless the person has first obtained an adult service provider license under this article.

(b) Application for an adult service provider license shall be made in the same manner as an application for an adult-oriented business license, except that the applicant need provide only the information called for in paragraphs (4) through (8) of § 16A-117(d), along with current photograph, fingerprints, and payment of all fees.
(Ord. No. 95.49, 12-14-95; Ord. No. 2007.07, 2-1-07)

Sec. 16A-120. Adult service provider or manager work identification card.

When a license is granted, the licensing officer shall provide to the adult service provider or adult-oriented business manager a work identification card. The card shall contain the name of the licensee, a photograph of the licensee, the number of the license issued to that licensee and the year for which the license has been issued.
(Ord. No. 95.49, 12-14-95; Ord. No. 2007.07, 2-1-07)

Sec. 16A-121. Adult service business - operating requirements.

An adult service business shall be provided in accordance with the following regulations. Knowing failure of a licensee or manager to insure compliance with the regulations on the premises is a violation of this article by the licensee or manager:

(1) A person employed or acting as an adult service provider or manager shall have a valid license issued pursuant to the provisions of this article. A license for each manager or service provider shall be displayed on the premises at all times. Such licenses shall be available for inspection upon request by a law enforcement officer or other authorized city official;

(2) An adult service business shall maintain a daily log of all persons providing adult services on the premises. The log shall cover the preceding twelve (12) month period and shall be available for inspection upon request by a law enforcement officer or other authorized city official;

(3) A person under the age of eighteen (18) years may not observe or provide an adult service;

(4) A person may not provide an adult service in an adult service business except upon a stage elevated at least eighteen (18) inches above floor level. All parts of the stage, or a clearly designated area thereof within which the adult service is provided, shall be a distance of at least three (3) feet from all parts of a clearly designated area in which patrons may be present. The stage or designated area thereof shall be separated from the area in which patrons may be located by a solid barrier or railing the top of which is at least three (3) feet in height. A provider or patron may not extend any part of his body over or beyond the barrier or railing;

(5) An adult service provider, in the course of providing an adult service, may not perform or simulate any specified sexual activities;

(6) Adult services may not be provided between the hours of 1:30 a.m. and 6:00 a.m. or between 1:30 a.m. and 10:00 a.m. on Sunday;

(7) An adult service may not be provided in any location which is not visible by direct line of sight at all times from a manager's station located in a portion of the premises which is accessible to patrons of the adult service business;

(8) An adult service shall not be provided in any location or area of a premises so as to be visible or viewable from a public right of way;

(9) An adult service provider shall wear his adult service identification card at all times while on the premises except while providing an adult service. The card shall be affixed to clothing on the front of the person and above waist level so that the picture and license number are clearly visible to patrons;

(10) An adult-oriented business manager shall be on the premises of an adult service business at all times during which any adult service is provided on the premises. The manager shall wear his identification card at all times while on the premises. The card shall be affixed to clothing on the front of the person and above waist level so that the picture and license number are clearly visible to patrons;

(11) An employee may not touch the breast, buttocks, or genitals of a patron, nor may a patron touch the breast, buttocks, or genitals of an employee;

(12) A sign, in a form prescribed by the licensing officer summarizing the provisions of paragraphs (3), (4), and (11) of this section shall be posted near the entrance of an adult service business in such a manner as to be clearly visible to patrons upon entry;

(13) With respect to a cabaret, the requirements of this section shall apply to the extent that they are not in conflict with specific statutory or valid regulatory requirements applicable to persons licensed to dispense alcoholic beverages; and

(14) The adult-oriented business shall comply with the operational requirements of the Zoning and Development Code.

(Ord. No. 95.49, 12-14-95; Ord. No. 2004.42, 1-20-05; Ord. No. 2007.07, 2-1-07)

Sec. 16A-122. Adult video facility - operating requirements.

(a) An adult video facility shall be operated in accordance with the following regulations. Knowing failure of a licensee or a manager to insure compliance with the regulations on the premises is a violation of this article by the licensee or manager.

(1) The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than one footcandle, as measured at the floor level;

(2) The premises shall be configured in such a way that a patron, whether sitting or standing, is visible below the waist by direct line of sight from a manager's station at all times during which the patron is viewing video material or other visual media material characterized by depiction of specified anatomical areas or specified sexual activities. No more than one patron may occupy a partitioned portion, booth, stall or viewing room at the same time. The manager's station shall be located in a portion of the premises accessible to patrons and shall not exceed thirty-two (32) square feet of floor area. If the premises has two (2) or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required in this paragraph must be an unobstructed view from the manager's station. It is the duty of the licensee or manager to ensure that at least one employee is on duty and situated in each manager's station at all times that any patron is on the premises;

(3) An adult-oriented business manager shall be on the premises of an adult video facility at all times that the facility is open for business. The manager shall wear his identification card in the manner described in § 16A-121(10) above; and

(4) The adult video facility shall comply with the operational requirements of the Zoning and Development Code.

(Ord. No. 95.49, 12-14-95 Ord. No. 2004.42, 1-20-05; Ord. No. 2007.07, 2-1-07)

Sec. 16A-123. Inspection of premises and records.

The manager of an adult-oriented business shall maintain on the premises business records reflecting all receipts and expenditures with respect to the business for the preceding two (2) years. Law enforcement or other authorized officers or employees of the city shall be granted entry to inspect the premises and business records of any adult-oriented business at any time it is occupied or open for business. It is an offense and grounds for suspension or revocation for a licensee, employee or agent to refuse to permit an inspection as provided herein, in addition to the penalty provisions of § 16A-134.

(Ord. No. 95.49, 12-14-95; Ord. No. 2007.07, 2-1-07)

Sec. 16A-124. Non-transferability of license.

Licenses issued under this article are not transferable. A licensee shall not conduct a different classification of an adult-oriented business than that designated on the license or conduct an adult-oriented business at any place other than the address designated on the license. No adult-oriented business shall be conducted under any name or under any designation or classification not specified on the license for that business.

(Ord. No. 95.49, 12-14-95; Ord. No. 2007.07, 2-1-07)

Sec. 16A-125. Grant or denial of license.

(a) Within sixty (60) days after the complete application for an adult-oriented business license is filed with the city, the licensing officer shall mail to the applicant a license or notice of license denial.

(b) Upon the filing of an application for an adult-oriented business manager license or an adult service provider license, the licensing officer shall issue to the applicant a temporary license. Within sixty (60) days after issuance of a temporary license, the licensing officer shall mail to the applicant a license or a notice of license denial.

(c) The issuance of any license does not waive any right of revocation the city may have.

(d) The licensing officer shall grant the license if all requirements for the application have been completed, unless the licensing officer finds any of the following conditions exist with respect to any applicant listed in the application:

(1) The applicant is under eighteen (18) years of age;

(2) The applicant must submit a signed individual application that stipulates that omission or falsification of information is sufficient grounds for denial of the application or later revocation in addition to other remedies authorized by law;

(3) The applicant is a corporation which is not qualified to transact business in this state;

(4) The applicant, the applicant's spouse, or the licensee is delinquent in payment to the city of taxes, fees, fines, or penalties assessed against or imposed upon the applicant, the applicant's spouse, or the licensee in relation to an adult-oriented business or arising out of any other business activity owned or operated by the applicant, the applicant's spouse, or the licensee and licensed by the city;

(5) The applicant or the licensee has failed to comply with or is in violation of applicable provisions of the zoning ordinances, or the building codes, or land use or other ordinances and regulations of the city, county, state or federal government relating to the business or activity to be conducted under the license, or the adult-oriented business violates the locational requirements of § 16A-133 of this article;

(6) Within the past two (2) years, the applicant or the licensee has had a license under this article revoked, or a similar license or permit in another jurisdiction has been revoked on the basis of conduct which would be grounds for revocation of a license issued under this article if committed in the city. The fact that the revocation is being appealed at the time of the decision on this application shall have no effect;

(7) The applicant or the licensee in the past five (5) years has been convicted of a felony violation or two (2) misdemeanor violations of one or more offenses in the categories stated in § 16A-117(d)(8). The fact that a conviction is being appealed shall have no effect; or

(8) The applicant or the licensee has committed an act in violation of 18 U.S.C. § 2257 within the past two (2) years.

(e) The licensing officer may deny an application for any reason pursuant to this article or for any violations pertaining to city, county, state and federal requirements.

(f) Licenses shall not be issued until the applicant has complied with city, county, state and federal law.
(Ord. No. 95.49, 12-14-95; Ord. No. 2001.18, 7-26-01; Ord. No. 2007.07, 2-1-07)

Sec. 16A-126. Suspension.

The licensing officer shall suspend a license for a period of thirty (30) days if the licensing officer determines that a licensee or employee has violated any provision of this article.
(Ord. No. 95.49, 12-14-95; Ord. No. 2007.07, 2-1-07)

Sec. 16A-127. Revocation of license.

(a) The licensing officer shall revoke a license issued pursuant to this article if the licensee:

(1) Is convicted of three (3) or more violations of this article in any twelve (12) month period;

(2) Is convicted of any crime or crimes on the basis of which a license may be denied under § 16A-125(d)(7);

(3) Gave false or misleading information in the application;

(4) Has knowingly operated or worked in the adult-oriented business during a period of time when the license was suspended;

(5) Is delinquent in payment to the city of taxes or fees related to the adult-oriented business or arising out of any other business activity owned or operated by the licensee and licensed by the city; or

(6) Has committed an act in violation of 18 U.S.C. § 2257.

(b) The fact that a conviction is being appealed shall have no effect on the revocation of the license.
(Ord. No. 95.49, 12-14-95; Ord. No. 2001.18, 7-26-01; Ord. No. 2007.07, 2-1-07)

Sec. 16A-128. Procedure for denial, revocation or suspension.

Applicants or licensees that wish to appeal the denial, revocation or suspension of a license are required to file such appeal to the hearing officer as follows:

(1) If the licensing officer determines that grounds exist to deny, suspend, or revoke an application or license, the licensing officer shall notify the applicant or licensee in writing of the denial, revocation or suspension, which notice shall include a summary of the grounds therefor. The notice shall be sent by certified mail to the address of the applicant or licensee listed in the current year's license application or renewal application, and the effective date of notice shall be the date the notice is actually received or five (5) business days after the date the notice is mailed, whichever occurs first.

(2) Within ten (10) business days after the effective date of notice, the respondent may provide to the licensing officer in writing a response which shall include a statement of reasons why the license or any renewal thereof, should not be denied, suspended, or revoked and which may include a request for a hearing. If a response is not received by the licensing officer in the time stated, the denial, suspension or revocation shall be final and notice thereof shall be sent to the applicant or licensee by certified mail; and

(3) Within seven (7) business days after receipt of a response, the licensing officer shall schedule a hearing before the hearing officer as designated by the finance and technology director. The respondent shall be notified in writing by certified mail of the date, time and place of the hearing. The hearing shall be scheduled not less than fifteen (15) no more than thirty (30) days after receipt by the licensing officer of the request for a hearing. The hearing shall be conducted in an informal manner. The respondent may be represented by counsel. The rules of evidence will not apply. The hearing officer shall render a written decision within five (5) business days after completion of the hearing and shall mail a copy of the decision by certified mail to the address of the respondent listed in the current year's application. In the case of a decision to deny, revoke or suspend a license, the licensee may continue to function under the license pending receipt of the final decision of the hearing officer. The decision shall be deemed final five (5) business days after it is mailed and shall constitute final administrative action.

(Ord. No. 95.49, 12-14-95; Ord. No. 2007.07, 2-1-07; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Sec. 16A-129. Judicial appeal.

(a) After applicant has been denied and all administrative remedies have been exhausted, the applicant may file in the superior court, by special action or other available procedure, an appeal challenging the validity of the denial.

(b) In the event that a license is revoked or suspended, and all administrative remedies have been exhausted, the licensee may file in the superior court, by special action or other available procedure, an appeal challenging the validity of the suspension or revocation.

(Ord. No. 95.49, 12-14-95; Ord. No. 2001.18, 7-26-01; Ord. No. 2007.07, 2-1-07)

Sec. 16A-130. Repealed.
(Ord. No. 95.49, 12-14-95; Ord. No. 2007.07, 2-1-07)

Sec. 16A-131. Application and license renewal fees.

(a) The initial application shall be submitted with a nonrefundable application and photograph fee plus the annual license fee in the amount established by city council (see Appendix A).

(b) The annual renewal application shall be submitted with a nonrefundable renewal application fee plus the annual license fee in the amounts established by city council (see Appendix A).

(c) The annual license fee shall be refunded upon denial of the license.

(d) Any person who fails to renew an adult business license, adult manager license or adult service provider license by December 31 of any year and who conducts activity covered by such license after such date shall be deemed operating without a license, and shall be subject to the late renewal penalty fee established by city council (see Appendix A), in addition to the penalty provisions of § 16A-134.

(e) Renewal applications not received prior to January 31, of any year will result in the termination of such license.

(f) Terminated licenses are not renewable and require a new application.

(g) All fees, including penalty fees, must be paid in full prior to license issuance.
(Ord. No. 95.49, 12-14-95; Ord. No. 2007.07, 2-1-07)

Sec. 16A-132. Other regulations applicable.

A license required by this article is in addition to any other licenses or permits required by the city, county, state, or federal government to engage in the business or occupation. Persons engaging in activities described in this article, including the operation of an adult-oriented business, shall comply with all other ordinances and laws, including the Zoning and Development Code, as may be required, to engage in the business or occupation.
(Ord. No. 95.49, 12-14-95; Ord. No. 2007.07, 2-1-07)

Sec. 16A-133. Location requirements.

(a) Adult-oriented businesses are allowed in the GID and HID zoning districts. No adult-oriented business shall be operated or maintained within one thousand three hundred twenty (1,320) feet from the defined provisions located in paragraphs (1) through (7) below. Measurements shall be made in a straight line in all directions, without regard to intervening structures or objects, from the nearest point on the property line of a parcel containing an adult-oriented business to the nearest point on the property line of a parcel containing the following:

(1) Another adult-oriented business;

(2) Child care facility;

(3) Public, private or charter school;

(4) A church synagogue, temple or similar religious worship building;

(5) A library, a public playground, a public community building, a public recreational facility, or a private recreational facility where minors are permitted;

(6) An establishment having an Arizona spirituous liquor license with any of the following classifications: Bar (Series 06); Beer and Wine Bar (Series 07) or the equivalent of such licenses; or

(7) A residential district or the property line of a lot devoted to a residential use in any zoning district.

(b) Any adult-oriented business that fails to comply with this section but which was lawfully operating before this article took effect shall not be deemed to be in violation of this article. However, such business will not be permitted to be increased, enlarged, extended or altered except the business may be changed so as to fully comply with this article. An adult-oriented business lawfully operating is not rendered in violation of this article by the location, subsequent to the grant or renewal of the license herein, of any of the premises identified in subsection (a) above.
(Ord. No. 95.49, 12-14-95; Ord. No. 2004.42, 1-20-05; Ord. No. 2007.07, 2-1-07)

State law reference – A.R.S. § 13-1422.

Sec. 16A-134. Penalty.

Violation of any requirement or prohibition stated in this article is a class 1 misdemeanor, punishable upon conviction as provided in § 1-7 of this code. With respect to a violation that is continuous in nature, each day that the violation continues shall constitute a separate offense.
(Ord. No. 95.49, 12-14-95)

Sec. 16A-135. Injunction.

The operation of an adult-oriented business without a valid license in violation of this article shall constitute a nuisance and any person who operates or causes to be operated such business shall be subject to a suit for injunctive relief as well as prosecution for criminal violations.
(Ord. No. 95.49, 12-14-95)

Secs. 16A-136—16A-139. Reserved.

ARTICLE VII. TEEN DANCE HALLS[5]

Sec. 16A-140. Definitions.

For the purpose of this article, the following terms shall have the meanings respectively ascribed to them in this section unless the context clearly requires otherwise:

(1) *Teen dance activity* means social dancing by person(s) under twenty-one (21) years of age unaccompanied by a parent or guardian at which an admission or minimum fee is charged.

(2) *Teen dance hall* means any place or establishment where a teen dance activity takes place or is provided. The term includes the building or pavilion or other place where the teen dancing activity takes place, together with all surrounding premises used for parking or surrounding premises used for any other purpose relating to the teen dancing activity.

(3) *Licensing officer* means the director of the internal services department of the city or his designee.

(4) *Owner* means the owner of record, as shown by the records in the office of the County Assessor, of the premises where a teen dance hall is located.

(5) *Business owner* means any legal owner of a teen dance hall or teen dance activity.

(6) *Person* means any individual, firm, corporation, partnership, company, association, business trust, government entity, and any other form of multiple organization.

(Ord. No. 95.36, 12-21-95; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10; Ord. No. O2014.27, 6-26-14)

Sec. 16A-141. Applicability, provisions cumulative.

(a) The provisions of this article shall apply to all teen dance activities or teen dance halls and persons as defined herein, whether such activities were commenced before, on or after the effective date of this article.

(b) The provisions of this article shall be in addition to any other regulations, privilege or license taxes or permit requirements required by the city, the state or other applicable agency and cumulative to any other applicable regulations, procedures or penalties.

(c) The provisions of this article shall not apply to any teen dance activity or teen dance hall conducted by a religious or governmental organization, or by a nonprofit organization with an IRS 501(c)(3) status or other nonprofit, eleemosynary or charitable designation approved by the licensing officer, when the activity or dance hall is conducted on the premises of or sponsored by the religious, governmental or nonprofit organization.

(Ord. No. 95.36, 12-21-95)

[5]**Editor's note**—Ord. No. 95.36 required that any teen dance hall in existence upon adoption of this ordinance shall make application for a license on or before thirty (30) days after the date of adoption.

Sec. 16A-142. License required.

(a) It is unlawful for any person to own, manage, operate or provide a teen dance hall or conduct a teen dance activity without first obtaining and maintaining in effect a teen dance hall license as required by this article.

(b) It is unlawful for any person licensed as provided in this article to operate under any name or conduct business under any designation not specified in the license.
(Ord. No. 95.36, 12-21-95)

Sec. 16A-143. Application.

(a) Any person desiring to obtain a teen dance hall license shall make application to the licensing officer who shall refer such application to the chief of police and community development director and any other interested department for appropriate investigation. The application shall be in such form as prescribed by the licensing officer and shall be fully completed before processing by the licensing officer. The application must be submitted at least forty-five (45) days prior to the proposed date of any teen dance activity.

(b) The application shall include a description of the proposed teen dance activity and shall include, but not be limited to, the following information set forth in this subsection. Paragraphs (1) through (9) below are required to be completed about the applicant, the business owner, the licensee if not the applicant or the business owner and the agent responsible for managing the premises on a day to day basis (hereinafter "managing agent"):

(1) Full legal name and any name by which the person is or has been known;

(2) Current home address and telephone number and addresses over the past five (5) years;

(3) Driver's license number or State of Arizona identification card number;

(4) Birth date, height, weight, hair and eye color;

(5) Business occupation and employment history for five (5) years;

(6) License history, including issuance, revocation, suspension or termination of any current or past state or city licenses, any liquor license number and managing agent; permits; professional or business license;

(7) The applicants and agents shall submit a full set of fingerprints to the Tempe police department for the purpose of obtaining a state or federal, or both, criminal records check pursuant to A.R.S. § 41-1750 and Public Law (PL) 92-544. The Department of Public Safety is authorized to exchange this fingerprint data with the Federal Bureau of Investigation. Fingerprints must be submitted on fingerprint cards provided by the finance and technology director or designee.

(8) Listing of any prior felony or misdemeanor convictions except minor traffic violations;

(9) Documentation of age over eighteen (18) years;

(10) Designation of the managing agent who will be managing or operating the teen dance hall at the indicated location and proof of the managing agent's authorization to act on behalf of any corporation or organization;

(11) Name, address and telephone number of any other local agent authorized to conduct daily business and proof of authority to act on behalf of the prospective licensee;

(12) Name, address and telephone of statutory agent in Arizona if a corporation or an out-of-state applicant, licensee or owner;

(13) Except for corporations listed on the major stock exchanges, the names and addresses of all persons financially interested in the business. If a person financially interested in the business of the prospective licensee is a corporation, the names and addresses of all persons financially interested in that corporation shall be provided;

(14) A plan of operation, program plan and security plan to ensure compliance with § 16A-145 and applicable provisions of this article;

(15) Evidence of current, valid privilege license issued by the city;

(16) Evidence of current, valid use permit or any other applicable zoning approval for the proposed activity issued by the city;

(17) Legal description and location of the premises and lot where the proposed activity will take place, submitted on a map drawn to scale, at least eight and one-half (8½) by eleven (11) inches, showing the dimensions of the property and the name and width of all internal and abutting streets, roads or alleys, any existing buildings, fences and easements, with distances to property lines;

(18) Floor plan containing an accurate drawing to scale depicting the interior plan and layout of the premises;

(19) A vicinity ownership map showing and labelling all lots within one hundred fifty (150) feet of the exterior boundaries of the lot on which the establishment is located. The one hundred fifty (150) foot measurement shall exclude any public property or public rights-of-way;

(20) A vicinity ownership list, and mailing labels properly addressed, containing names and mailing addresses, with correct zip codes, of owners of all parcels required to be shown on the vicinity ownership map. The owners shall be as shown on the last assessment of the property by the county;

(21) A complex/center/building tenant list, and mailing labels properly addressed, containing names and mailing addresses, with correct zip codes, of tenants which share the site or building with the proposed licensee as to use of common points of ingress and egress or common parking areas or facilities; and

(22) Such other information as may be requested by the licensing officer to determine the truth of the information required to be set forth above.

(c) Any change in ownership of the business or in the information required to be provided in paragraphs (1), (10), (11), (12), (13) or (18) above shall be reported to the licensing officer within ten (10) calendar days after the change. Such changes shall be subject to investigation and approval by the city as provided in subsection (e) hereof and, if disapproved, the disapproval shall be grounds for termination of the license as provided in § 16A-151 of this code. The requirement for reporting changes as required herein is effective at all times during the city's consideration of the application and at all times when a license issued hereunder is in effect. All other information set out above must be updated at the time of the renewal of the license.

(d) Any change in the plan of operation or security plan in paragraph (14) above must be approved by the city prior to the change becoming effective. Failure to comply with an approved plan of operation, program plan or security plan shall constitute grounds for termination of the license as provided in § 16A-151.

(e) The police department shall conduct an investigation of the application and background of the applicant and proposed licensee. Based on such investigation, the police department shall recommend to the licensing officer the approval or denial of the license. In addition, the community development department and fire medical rescue department, and any other affected department, may inspect any premises proposed as the site of the establishment and may make separate recommendations to the licensing officer concerning compliance with the provisions of this article and applicable codes. The licensing officer shall make a recommendation as to issuance or denial of the license, including any conditions recommended or applicable to the license or licensee, and transmit the recommendation to the city council.
(Ord. No. 95.36, 12-21-95; Ord. No. 97.20, 4-10-97; Ord. No. 2001.17, 7-26-01; Ord. No. 2002.25, 8-1-02; Ord. No. 2010.02, 2-4-10; Ord. No. O2014.14, 3-20-14)

Sec. 16A-144. Application fee and license fee.

(a) The application shall be accompanied by a nonrefundable application fee in the amount set by council by motion or resolution, and the license fee as required herein.

(b) The license fee shall be set by council by motion or resolution for each day that a teen activity takes places and for annual license. The annual license fee for an initial license may be pro-rated to one-half (1/2) the amount required herein if the proposed licensee will be open for business only during the last half of the calendar year, that is, after July 1.
(Ord. No. 95.36, 12-21-95)

Sec. 16A-145. Requirements for operation of establishment, plan of operation, program plan and security plan required.

(a) A teen dance hall shall comply with this article and all applicable city and state laws and ordinances, including but not limited to fire and building and zoning codes. In addition, the following requirements apply:

(1) No teen dance hall may be open and no teen dance activity may be conducted on any day after 11:30 p.m. unless otherwise specified in the teen dance hall license issued by the city. In no event shall any person fifteen (15) years of age or under be allowed on the premises of a teen dance hall or activity after 10:00 p.m.;

(2) Patrons over twenty (20) years of age or under fifteen (15) years of age are prohibited at a teen dance activity or in a teen dance hall;

(3) Written proof of identification shall be required for admission to a teen dance hall to ensure compliance with paragraph (2) of this section. The following written instruments are the only acceptable types of identification:

a. An unexpired driver's license issued by any state, provided such license includes a picture of the licensee;

b. An identification license issued pursuant to state law;

c. An armed forces identification card;

d. A valid unexpired passport issued by a government which contains a photograph of the person and the date of birth;

e. An unexpired identification card issued by a public or private school or educational institution which contains a date of birth and photograph;

(4) No person shall be admitted to, nor shall any person be allowed to remain on, the licensed premises who is or appears to be under the influence of spirituous liquor or drugs or who is disturbing the peace;

(5) No spirituous liquor may be furnished, sold, served, displayed, visible or consumed at a teen dance hall during the hours that the teen dance activity is conducted. If the teen dance hall licensee holds a liquor license from the state, spirituous liquor service, display and consumption must terminate during the hours that the teen dance activity is conducted;

(6) No person shall smoke, as defined in § 22-41 of this code, nor shall tobacco in any form be consumed or possessed by a minor, nor dispensed, displayed or visible to any minor, at a teen dance hall during the hours that a teen dance activity is conducted;

(7) Admittance and any admittance lines for entry to the teen dance hall shall be closed at 10:30 p.m. or at such other time prescribed in the license issued by the city. In no event shall a patron be allowed to exit and subsequently re-enter the dance hall during a teen dance activity;

(8) Any parking used by patrons of the licensee, any parking area of the licensee, and any parking area within three hundred (300) feet of the licensed premises shall be supervised by the licensee to ensure that the parking areas are used by persons entering and exiting from their vehicles and are not used as a gathering place, or for consumption or illegal possession of spirituous liquor or tobacco, and conform with the security plan approved by the city;

(9) A plan of operation which demonstrates how the licensee will ensure compliance with these regulations shall accompany the application and is subject to approval by the city. Any change in the plan of operation shall be submitted to the city at least ten (10) days prior to the proposed change becoming effective and must be approved by the city prior to becoming effective;

(10) A program plan shall be provided to the city prior to issuance of the license. The program plan shall include a calendar of regular and special teen events, programs or concerts for the upcoming period, including target audience or market, expected attendance, entertainment and format, and security plan modifications. Security plan modifications must be approved by the police department. Any changes occurring after submission of the program plan shall be submitted to the police department at least fifteen (15) days prior to the proposed program or change taking effect and shall be accompanied by proposed amendments or additions to the security plan;

(11) A security plan, including security staffing and qualifications, lighting, landscaping, building and parking security and other aspects sufficient to address interior and exterior safety of patrons and the public, and any other items requested by the police department or licensing officer, shall be submitted for approval by the police department prior to issuance of a license. Any change in the security plan after submission or after approval shall be submitted ten (10) days prior to the proposed change becoming effective and must be approved by the police department prior to becoming effective; and

(12) Other regulations and conditions may be required for a licensee or for all licensees generally as the council deems desirable.

(b) A copy of the plan of operation, program plan and security plan shall be available at the teen dance hall for inspection by the city during business hours and at other reasonable times. The plans shall include such information as required by the licensing officer, including identification of employees, agents or private contractors who are responsible for security and ensuring compliance with the terms of this article.
(Ord. No. 95.36, 12-21-95)

Sec. 16A-146. Grounds for denial.

The following include, but are not limited to, grounds for denial of an application for teen dance hall license:

(1) The applicant, or proposed conduct of the teen dance activity, fails to meet the requirements of this article or any applicable provision of this code or law;

(2) The applicant or conduct of the proposed teen dance activity will not conform or comply with laws and regulations;

(3) The applicant does not have an acceptable plan for compliance with § 16A-145 of this article on requirements for operation;

(4) The applicant is a corporation or entity which is not qualified to transact business in Arizona;

(5) Misrepresentations or material misstatements are made in the application;

(6) Harm to the public health, safety or welfare of the community, or clear or present danger of serious damage or danger to the public, would result from granting the license; or

(7) A business owner, or a managing agent, an applicant, other managing employee or a controlling person in the business to be licensed has been convicted of:

a. a felony; or

b. a misdemeanor which relates to the activity to be licensed,

or has, within two (2) years preceding the date of the issuance of a license, violated any of the provisions of this article or the city code while conducting a teen dance hall or teen dance activity.

(Ord. No. 95.36, 12-21-95)

Sec. 16A-147. Public hearing on license, notice.

(a) The city council shall hold a public hearing on the application.

(b) Notice of the hearing shall be given at least fifteen (15) days prior to the hearing in the following manner:

(1) Notice shall be published at least once in a newspaper of general circulation in the city;

(2) Notice shall be posted on the affected property in such a manner as to be legible from the public right-of-way; and

(3) Notice shall be mailed by first class mail to each owner and tenant as provided in paragraphs (20) and (21) of § 16A-143.

(c) At the public hearing, the council may adopt the recommendation of the licensing officer or may render any other decision, including but not limited to conditions applicable to the licensee.
(Ord. No. 95.36, 12-21-95)

Sec. 16A-148. Display of license, lost or destroyed license.

A licensee shall display such license in a conspicuous place in the teen dance hall. If a license is destroyed, lost or defaced, the licensee shall be entitled to a replacement license for a fee set by the licensing officer.
(Ord. No. 95.36, 12-21-95)

Sec. 16A-149. Transferability, automatic termination of license.

(a) Licenses issued hereunder are not transferable.

(b) The following shall result in automatic termination of a teen dance hall license:

(1) Any change in location of a licensed teen dance hall;

(2) Any sale or transfer of any interest in the teen dance hall; or

(3) Upon the revocation or termination of any use permit or other zoning approval issued by the city relating to the teen dance hall or activity.

(c) A new application may be made by the person whose license is terminated as provided in this section, or by another person desiring to own or operate a teen dance hall.
(Ord. No. 95.36, 12-21-95)

Sec. 16A-150. Renewal, appeals from denial.

(a) Annually, at least thirty (30) days prior to the first day of January of each year, a licensed teen dance hall shall apply to the licensing officer for renewal of the teen dance hall license. Application shall be made and reviewed as an original application except that:

(1) No application fee is payable on a renewal application; and

(2) Public hearing and notice as required in § 16A-147 shall be conducted only if required by the licensing officer.

(b) Appeals from the denial of a renewal license application may be taken to the city council by filing a written notice of appeal with the city clerk within seven (7) calendar days after the date of the decision of the licensing officer denying the renewal license. The city council may affirm, deny, modify or otherwise amend the decision of the licensing officer. The city council's decision is final.
(Ord. No. 95.36, 12-21-95)

Section 16A-151. Grounds for termination, hearing.

(a) In addition to the automatic termination of a license as provided in this article, the license may be revoked, suspended or denied renewal for any one or more of the following grounds:

(1) The licensee is guilty of fraud in conducting the business or deceit in obtaining a license to conduct the business;

(2) The licensee has been convicted in a court of competent jurisdiction of a felony or of any misdemeanor which relates to the licensed activity;

(3) The licensee is guilty of untrue, fraudulent, misleading or deceptive advertising;

(4) The licensee is grossly ignorant of or guilty of wilful negligence in the business of the teen dance hall;

(5) The licensee has violated any of the provisions of §§ 16A-143, 16A-145 or 16A-153 of this article, or § 22-8 of this code on juvenile curfew, or any other provision of this article or the city code;

(6) The licensee fails to comply with the terms of the plan of operation, program plan or security plan as approved by the city;

(7) There occurs on the premises repeated acts of violence or disorderly conduct;

(8) The licensee or any employee or managing agent thereof fails or refuses to make the premises or records available for inspections and examination as provided in this article;

(9) The licensee knowingly files an application or other document with material information which is false or misleading or knowingly gives testimony in an investigation or other proceeding which is false or misleading;

(10) The licensee is delinquent for more than ninety (90) days in the payment of any applicable taxes to the city;

(11) The licensee fails to take reasonable steps to protect the safety of a customer of the licensee entering, leaving or remaining on the licensed premises when the licensee knew or should have known of the danger to such person, or the licensee fails to take reasonable steps to intervene by notifying law enforcement officials or otherwise to prevent or break up an act of violence or an altercation occurring on the licensed premises or immediately adjacent to the premises when the licensee knew or reasonably should have known of such acts of violation or altercations;

(12) The licensee, his managing agent, or other managing employee knowingly associates with a person who has engaged in racketeering, as defined in A.R.S. § 13-2301, or has been convicted of a felony and the association is of such a nature to create a reasonable risk that the licensee will fail to conform to the requirements of this article or any criminal statute of this state; or

(13) Any enlargement or expansion of the premises of the teen dance hall or activity occurs without appropriate approvals from the city.

(b) To suspend or revoke a license, the licensing officer shall deliver or mail by certified mail to the business address as shown by the license application, or to the last reported business address shown in a renewal or other report, a written notice that such license is suspended or revoked. The reason for the suspension or revocation shall be set forth in the notice and the provisions of subsection (c) hereof on hearing and appeal rights. A suspended or revoked license shall be surrendered to the licensing officer on demand.

(c) The licensing officer shall grant on demand to any licensee whose license has been revoked or suspended a full hearing on the merits of such suspension or revocation. Appeal of the licensing officer's decision to the city council shall be made within seven (7) calendar days after the receipt of the licensing officer's notice of suspension or revocation, and failure to demand a hearing within such time will constitute full waiver. The decision of the council is final.
(Ord. No. 95.36, 12-21-95)

Sec. 16A-152. Application after denial or termination.

No person may apply for a teen dance hall license within one year from:

(1) The denial of any such license to the applicant; or

(2) The suspension, revocation, termination or non-renewal of such license

unless the cause of the denial, suspension, termination, revocation or nonrenewal has been, to the satisfaction of the licensing officer, removed in such time.
(Ord. No. 95.36, 12-21-95)

Sec. 16A-153. Unlawful activities.

It is unlawful for any person or licensee at a teen dance hall to:

(1) Operate without any required city or state license or permit or in violation of any applicable city or state law or ordinance;

(2) Admit persons over twenty (20) years of age or under fifteen (15) years of age;

(3) Allow an intoxicated or disorderly person to come into or remain on the licensed premises;

(4) Knowingly permit unlawful possession, use, or sale of narcotics, dangerous drugs or marijuana;

(5) Knowingly permit prostitution or solicitation of prostitution;

(6) Knowingly permit unlawful gambling on the premises;

(7) Knowingly permit trafficking in stolen property;

(8) Fail or refuse to make the premises or records, or the plans required in § 16A-145, available for inspection as provided in this article; or

(9) Employ or permit a person to be employed on a salary, contract or commission basis for the purpose of dancing with patrons, except that this shall not apply to bona fide instructors of dancing regularly employed for the exclusive purpose of giving bona fide instructions for dancing.

(Ord. No. 95.36, 12-21-95)

Sec. 16A-154. Investigation to determine violation, requests for investigation.

The police chief or the licensing officer or any of their agents may enter in a lawful manner the premises of a teen dance hall or where a teen dance activity takes place and may attend, witness, visit and investigate any and all of the teen dance activities or teen dance hall and any other activities therein and thereon. In addition, the police chief or the licensing officer or their agents may inspect in a lawful manner the teen dance hall or the buildings and premises in which teen dance activities are carried on to determine whether or not there exist any violations of this article or the city code. The police chief or licensing officer may request any other department of the city to make an investigation to determine whether or not the teen dance hall or activity is being operated in compliance with this article and ordinances of the city.

(Ord. No. 95.36, 12-21-95)

Sec. 16A-155. Penalty.

(a) A violation of this article is an offense, punishable as provided in § 1-7 of this code. Each day on which a violation continues shall be a separate offense.

(b) In addition to the punishments provided in this section, a violation of this article is grounds for revocation of the license as provided in § 16A-151.

(Ord. No. 95.36, 12-21-95)

Secs. 16A-156—16A-159. Reserved.

ARTICLE VIII. MASSAGE ESTABLISHMENTS

Sec. 16A-160. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Applicant means a person or persons who have applied for a massage establishment license.

Chair massage means a massage administered by a clothed massage therapist to the scalp, face, neck, shoulder, back area (above the waist), arm, hand, knee, leg (below the knee), ankle, or foot of another person, who is clothed, utilizing a massage chair.

Client means an individual who enters into an agreement for massage techniques for compensation of any kind within the city.

Clothed means fabric which is opaque and which completely covers a person from the base of the neck down to a point not to exceed four (4) inches above the center of the knee cap. Paint does not meet the definition of clothed.

Event massage means any event whereby the city has issued a special event permit pursuant to Tempe City Code, Chapter 5. Event massages shall be performed by a state licensed massage therapist who is clothed.

Licensee means a person in whose name a license to operate a massage establishment has been issued, as well as each individual listed as an applicant on the application for a license.

Licensing officer means finance and technology director or designee.

Massage establishment means any place of business, facility, premises, building, vehicle, place or location wherein any massage techniques are administered, practiced or used.

Massage techniques means any nonincidental touching, rubbing or other ministration of the human body including, though not expressly limited to, the following named subjects and methods of treatment: oil rubs; alcohol rubs; salt baths; touching procedures upon the external parts of the body by hand or any electrical, mechanical or vibratory apparatus, including stroking, friction, kneading, rolling, vibrating, cupping, petrissage, rubbing, effleurage and tapotement. Massage techniques does not include the diagnosis of illness or disease, medical procedures, naturopathic manipulative medicine, osteopathic manipulative medicine, chiropractic adjustive procedures, hemopathic neuromuscular integration, electrical stimulation, ultrasound, prescription of medicines or the use of modalities for which a license to practice medicine, chiropractic, nursing, occupational therapy, athletic training, physical therapy, acupuncture or podiatry is required by law.

Massage therapist means any person who, for compensation of any kind, performs any massage techniques as defined in this section and is licensed as a massage therapist by the State of Arizona.

Person means an individual, firm, partnership, joint venture, association, corporation, estate, trust, receiver, syndicate, broker, or any other form of legal entity.

Wellness program means an employer sponsored program that promotes wellness, healthcare or wellness and healthcare education to its employees.
(Ord. No. 2007.59, 10-4-07; Ord. No. 2010.02, 2-4-10)

Sec. 16A-161. Administration.

(a) The administration of this article, including the duty of prescribing forms, is vested in the licensing officer, except as otherwise specifically provided. The police chief and the community development director shall render assistance in the administration and enforcement of this article as follows:

(1) Police chief shall make police department facilities and personnel available to fingerprint an applicant for a license. The cost of fingerprinting shall be paid by the applicant at the time the service is provided. Records of fingerprints so obtained shall be maintained at the police department;

(2) Police chief shall have a criminal history inquiry conducted on all persons listed as an applicant or licensee in a license application. The inquiry shall be limited to determining whether an applicant for a license has a criminal conviction of the type described in § 16A-163(c)(9) of this article. The police chief shall notify the licensing officer in the event such criminal conviction is found to exist;

(3) Community development director shall notify the licensing officer whether an applicant or a licensee in a license application has failed to comply with or is in violation of applicable provisions of the Zoning and Development Code, building codes, development standards or other land use ordinances and regulations of the city relating to the business to be operated under the license; and

(4) Nothing herein is intended to prohibit or restrict the police chief or the community development director from providing additional assistance from their normal duties and responsibilities or as requested by the licensing officer.

(b) An application for a license or for the renewal of a license made pursuant to this article shall be submitted to the licensing officer who shall grant or deny the application in accordance with the provisions of this article. The licensing officer shall also suspend or revoke a license in accordance with the provisions of this article.

(c) A license issued pursuant to this article shall expire on December 31 of the year in and for which it is issued and may be renewed annually.
(Ord. No. 2007.59, 10-4-07; Ord. No. 2010.02, 2-4-10)

Sec. 16A-162. Exemptions.

A massage establishment license shall not be required for the following activities:

(1) The following persons while engaged in their respective professions or occupations for which they are licensed to practice or perform in Arizona, if they do not hold themselves out to the public as massage therapists and their performance of massage is only in connection with their profession or occupation:

a. Physicians, doctors of oriental medicine, surgeons, chiropractors, osteopaths or physical therapists, and persons directly under their control and supervision;

b. Registered nurses;

c. Barbers, hairdressers and cosmeticians; or

d. Reflexologists.

(2) Event massage;

(3) A client's temporary or permanent place of residence;

(4) Wellness programs; or

(5) Chair massages.

(Ord. No. 2007.59, 10-4-07)

Sec. 16A-163. Application for a massage establishment license.

(a) A person who wishes to operate a massage establishment shall submit an application and fees for a license to the licensing officer as required by this article. The application shall be on a form prescribed by the licensing officer and obtainable from the licensing officer. An application shall be deemed filed with the city when the licensing officer has received the required fees, a completed application with all information required in subsection (c), and the fingerprints of each applicant.

(b) The applicants shall submit a full set of fingerprints to the police department for the purpose of obtaining a state or federal, or both, criminal records check pursuant to A.R.S. § 41-1750 and Public Law (PL) 92-544. The Department of Public Safety is authorized to exchange this fingerprint data with the Federal Bureau of Investigation. Fingerprints must be submitted on fingerprint cards provided by the licensing officer.

(c) An applicant for a license under this article shall submit the following:

(1) The full legal name and current residence address of the applicant;

(2) Any other names by which the applicant has been known during the previous five (5) years;

(3) Residence address for the past five (5) years;

(4) Written proof that the applicant is over the age of eighteen (18) years;

(5) The address at which the applicant desires to do business;

(6) The applicant's height, weight and hair and eye color;

(7) The business, occupation or employment history of the applicant during the previous five (5) years;

(8) The business license history of the applicant; whether the applicant previously operating in this or another city or state under license has had such license suspended or revoked, the reason therefor, and the business activity or occupation subsequent to such suspension or revocation; and

(9) All felony and misdemeanor convictions, excluding those for traffic offenses, and the grounds of such conviction, regardless of whether or not such convictions are being appealed.

(Ord. No. 2007.59, 10-4-07)

Sec. 16A-164. Application and license fees.

(a) The application shall be submitted with an application fee and a license fee, as established by city council (Appendix A). The license fee shall be refunded upon denial of the license.

(b) The annual license renewal application shall be submitted with a nonrefundable license fee in the amounts established by city council (see Appendix A).

(c) Any person who wishes to renew a massage establishment license for the next year shall renew by December 31 of the current year. Any person who conducts activity covered by such license after that date shall be deemed operating without a license, and shall be subject to the late renewal penalty fee established by city council (see Appendix A), in addition to the penalty provisions of § 16A-173.

(d) Renewal applications not received by January 31, will result in the termination of such license.

(e) Terminated licenses are not renewable and require a new application.

(f) All fees, including penalty fees, must be paid in full prior to license issuance.

(Ord. No. 2007.59, 10-4-07)

Sec. 16A-165. Inspection of premises and records.

(a) No massage establishment license shall be issued unless the establishment complies with each and all of the following minimum requirements:

(1) Minimum lighting shall be provided in accordance with the Uniform Building Code and, in addition, at least one artificial light of not less than sixty (60) watts shall be provided in each room or enclosure where services are performed on patrons and shall be in use whenever such services are being performed;

(2) Minimum ventilation shall be provided in accordance with the Uniform Building Code;

(3) Adequate equipment shall be provided for disinfecting and sterilizing instruments used in administering or practicing any massage techniques;

(4) Closed cabinets shall be provided and used for storage of clean linens;

(5) Adequate dressing and toilet facilities shall be provided for patrons. A minimum of one dressing area, one toilet and one wash basin shall be provided for each massage establishment; provided, however, that if male and female patrons are to be served simultaneously at the establishment, a separate massage room or rooms and separate dressing areas shall be provided for male and female patrons;

(6) All walls, ceiling, floors, pools, showers, bathtubs, steam rooms and all other physical accommodations for the establishment must be in good repair and maintained in a clean and sanitary condition. Wet and dry heat rooms, steam or vapor rooms and cabinets, shower compartments and toilet rooms shall be thoroughly cleaned each day the business is in operation. Bathtubs shall be thoroughly cleaned after each use;

(7) Clean and sanitary towels shall be provided for each patron. The headrest of each table shall be provided with a clean and sanitary towel, paper towel or sheet for each patron;

(8) A minimum of one separate wash basin shall be provided in each massage establishment, which basin shall provide soap or detergent and hot and cold running water at all times and shall be located within or as close as practical to the area devoted to the performing of massage techniques. In addition, there shall be provided at each wash basin sanitary towels placed in permanently installed dispensers; and

(9) Compliance with all applicable provisions of the city fire code shall be required.

(b) The licensee of a massage establishment shall maintain on the premises business records reflecting all receipts and expenditures with respect to the business for the preceding two (2) years. For purposes of ensuring ordinance compliance, law enforcement or other authorized officers or employees of the city shall be granted entry to inspect establishment areas open to the

public and business records of any massage establishment at any time it is open for business. It is an offense and grounds for suspension or revocation for a licensee, employee or agent to refuse to permit an inspection as provided herein, in addition to the penalty provisions of § 16A-173.

(c) Every massage establishment shall keep and maintain a register of all licensed massage therapists which includes their full legal name, date of birth, home address, telephone number, employment position, date first began service and when terminated service, and their massage therapist's license number and date of expiration. This information shall be available for inspection by the licensing officer or designee.
(Ord. No. 2007.59, 10-4-07)

Sec. 16A-166. Unlawful activities.

(a) It shall be unlawful for a person to operate a massage establishment without a valid license issued pursuant to this article.

(b) It shall be unlawful for a person to operate a massage establishment under any name or designation, or under any premises name or designation, or at any premises address not specified in a valid license issued pursuant to this article.

(c) It shall be unlawful for any operator of a massage establishment to hire or engage any person conducting massage techniques who does not hold a current massage therapist license issued by the State of Arizona.

(d) A valid license for the massage establishment shall be displayed on the premises in such manner as to be readily visible to patrons.

(e) It shall be unlawful to practice or administer any massage techniques, whether for a fee or gratuity:

(1) In a manner or under circumstances intended to arouse, appeal to or gratify sexual desires;

(2) To any other person whose genital organs, buttocks or female breast are not covered by opaque fabric;

(3) While dressed in such a way as the genital organs, buttocks or female breast are not covered by opaque fabric; or

(4) In any way touch the genital organs of the individual receiving treatment.

(f) It shall be unlawful to practice or administer any massage techniques, whether for a fee or gratuity, without first obtaining and maintaining in effect a massage therapist license as required by the State of Arizona.

(g) It shall be unlawful for any massage establishment to conduct or operate on the same premises whereon is also conducted the business of a cocktail lounge, photography studio, model studio, art studio, telephone answering service, motion picture theater or adult-oriented business.

(h) It shall be unlawful to operate a massage establishment as a home occupation, per the Zoning and Development Code.

(i) It shall be unlawful for any massage establishment to provide services any time between the hours of 12:00 midnight and 6:00 a.m.
(Ord. No. 2007.59, 10-4-07)

Sec. 16A-167. Non-transferability of license.

(a) Licenses issued under this article are not transferable.

(b) Upon the sale or transfer of any interest in a massage establishment, the license shall be null and void. A new application shall be submitted by any person desiring to own or to operate all or any portion of a massage establishment. The provisions of §§ 16A-165 and 16A-166 shall apply to any person applying for a massage establishment license for premises previously used as a massage establishment.

(c) Sale or transfer of any interest in an existing massage establishment or any application for enlargement or expansion of the building or other place of business of a massage establishment shall require inspection and compliance with §§ 16A-165 and 16A-166.
(Ord. No. 2007.59, 10-4-07)

Sec. 16A-168. Grounds for denial of license.

(a) The licensing officer shall not grant a license if:

(1) All requirements for the application have not been completed;

(2) The applicant is under eighteen (18) years of age;

(3) The applicant has failed to provide information reasonably necessary for issuance of the license, or has falsely answered a question or request for information on the application form;

(4) The applicant is a corporation which is not qualified to transact business in this state;

(5) The applicant is delinquent in payment to the city of taxes, fees, fines, or penalties assessed against or imposed upon the applicant, licensee or massage establishment or arising out of any other business activity owned or operated by the applicant, licensee or the massage establishment;

(6) The applicant or the massage establishment has failed to comply with or is in violation of applicable provisions of the zoning ordinances, or the building codes, or land use or other ordinances and regulations of the city relating to the business or activity to be conducted under the license;

(7) Within the past two (2) years, the applicant or the massage establishment has had a license under this article revoked, or a similar license in another jurisdiction has been revoked on the basis of conduct which would be a ground for revocation of a license issued under this article if committed in the city. The fact that the revocation is being appealed at the time of the decision on this application shall have no effect; or

(8) The applicant for massage establishment in the past five (5) years has been convicted of a misdemeanor involving moral turpitude or a felony. The fact that a conviction is being appealed shall have no effect;

(b) The licensing officer may deny an application for any reason pursuant to this article or for any violations pertaining to city, county, state and federal requirements; or

(c) Licenses shall not be issued until the applicant has complied with city, county, state and federal law.
(Ord. No. 2007.59, 10-4-07)

Sec. 16A-169. Suspension or revocation.

(a) The licensing officer may suspend any license issued under this article for a specified period not to exceed sixty (60) days, or revoke such license, for any of the following reasons:

(1) Conviction of any felony involving dishonesty, deceit, theft, assaultive conduct or sexual misconduct;

(2) When the licensee has knowingly made any false or misleading statement in any report or record required to be made or kept under this article;

(3) Any other violation of this article, city code, state or federal law;

(4) Conducting business in an unlawful manner and in such a manner as to constitute a breach of the peace or constitute a menace to the health, safety or general welfare of the public;

(5) Any sexual act or engaging in sexual activity with a patron;

(6) Any nudity or exposure by the massage establishment personnel;

(7) Allowing a non-licensed individual to practice massage techniques within the licensed establishment; or

(8) The applicant is delinquent in payment to the city of taxes, fees, fines, or penalties assessed against or imposed upon the applicant, the licensee in relation to a massage establishment business or arising out of any other business activity owned or operated by the applicant.

(b) The city shall give written notice of the suspension or revocation to the licensee, which notice shall contain the reasons for the suspension or revocation and, if applicable, the length of the suspension. The notice shall be sent by certified mail to the address of the applicant or licensee listed in the current year's license application or renewal application, and the effective date of notice shall be the date the notice is actually received or five (5) business days after the date the notice is mailed, whichever occurs first.
(Ord. No. 2007.59, 10-4-07)

Sec. 16A-170. Procedure for denial, suspension or revocation.

Applicants or licensees that wish to appeal the denial, suspension or revocation of a license are required to file such appeal to the hearing officer as follows:

(1) If the licensing officer determines that grounds exist to deny, suspend, or revoke an application or license the licensing officer shall notify the applicant or licensee in writing of the denial, suspension or revocation, which notice shall include a summary of the grounds therefor. The notice shall be sent by certified mail to the address of the applicant or licensee listed in the current year's license application or renewal application, and the effective date of notice shall be the date the notice is actually received or five (5) business days after the date the notice is mailed, whichever occurs first;

(2) Within ten (10) business days after the effective date of notice, the respondent may provide to the licensing officer in writing a response which shall include a statement of reasons why the license or any renewal thereof, should not be denied, suspended, or revoked. If a response is not received by the licensing officer in the time stated, the denial, suspension or revocation shall be final and notice thereof shall be sent to the applicant or licensee by certified mail; and

(3) Within seven (7) business days after receipt of a response, the licensing officer shall schedule a hearing before the hearing officer as designated by the finance and technology director. The respondent shall be notified in writing by certified mail of the date, time and place of the hearing. The hearing shall be scheduled not less than fifteen (15) and no more than thirty (30) days after receipt by the licensing officer of the request for a hearing. The hearing shall be conducted in an informal manner. The respondent may be represented by counsel. The rules of evidence will not apply. The hearing officer shall render a written decision within five (5) business days after completion of the hearing and shall mail a copy of the decision by certified mail to the address specified by the respondent. In the case of a decision to deny, suspend or revoke a license, the licensee may continue to function under the license pending receipt of the final decision of the hearing officer. The decision shall be deemed final five (5) business days after it is mailed and shall constitute final administrative action.

(Ord. No. 2007.59, 10-4-07; Ord. No. 2010.02, 2-4-10)

Sec. 16A-171. Judicial appeal.

(a) After applicant has been denied and all administrative remedies have been exhausted, the applicant may file in the superior court, by special action or other available procedure, an appeal challenging the validity of the denial.

(b) In the event that a license is suspended or revoked, and all administrative remedies have been exhausted, the licensee may file in the superior court, by special action or other available procedure, an appeal challenging the validity of the suspension or revocation.
(Ord. No. 2007.59, 10-4-07)

Sec. 16A-172. Application after denial or revocation.

No person may apply for any massage establishment license within one year from the denial or revocation of any such license, unless the cause of such denial or revocation has been remedied to the satisfaction of the licensing officer.
(Ord. No. 2007.59, 10-4-07)

Sec. 16A-173. Penalty.

Violation of any requirement or prohibition stated in this article is a class 1 misdemeanor, punishable upon conviction as provided in § 1-7 of this code. With respect to a violation that is continuous in nature, each day that the violation continues shall constitute a separate offense.
(Ord. No. 2007.59, 10-4-07)

Sec. 16A-174. Other regulations applicable.

A license required by this article is in addition to any other licenses or permits required by the city, county, state, or federal government to engage in the business or occupation. Persons engaging in activities described in this article, shall comply with all other ordinances and laws, including the Zoning and Development Code, as may be required, to engage in the business or occupation.
(Ord. No. 2007.59, 10-4-07)

Chapter 17

MASSAGE ESTABLISHMENTS[1]

ARTICLE I. IN GENERAL

Sec. 17-1. Repealed.
(Ord. No. 2004.49, 11-18-04; Ord. No. 2007.59, 10-4-07)

Sec. 17-2. Repealed.
(Ord. No. 2004.49, 11-18-04; Ord. No. 2007.59, 10-4-07)

Sec. 17-3. Repealed.
(Ord. No. 2004.49, 11-18-04; Ord. No. 2007.59, 10-4-07)

Secs. 17-4—17-9. Reserved.

[1]**Cross references—**Licenses, taxation and miscellaneous business regulations, Ch. 16A; using room for prostitution, § 22-1.

Editor's note—Chapter 17 was rewritten and renumbered in its entirety (Ord. No. 2004.49). Prior ordinances were Code 1967; Ord. No. 88.38, 5-26-88; Ord. No. 89.61, 11-9-89; Ord. No. 90.34, 7-12-90; Ord. No. 91.40, 12-12-91; Ord. No. 92.48, 11-12-92; Ord. No. 96.05, 6-6-96; Ord. No. 97.20, 4-10-97; Ord. No. 98.04, 1-22-98; Ord. No. 2001.17, 7-26-01; Ord. No. 2001.32, 10-18-01; Ord. No. 2002.26, 8-1-02)

Editor's note—Ord. No. 2007.59 repealed Chapter 17 and it has been incorporated into Chapter 16A, License and Business Regulations, Article VIII entitled Massage Establishments.

ARTICLE II. PREMISES ACTIVITY AND REQUIREMENTS

Sec. 17-10. Repealed.
(Ord. No. 2004.49, 11-18-04; Ord. No. 2007.59, 10-4-07)

Sec. 17-11. Repealed.
(Ord. No. 2004.49, 11-18-04; Ord. No. 2007.59, 10-4-07)

Sec. 17-12. Repealed.
(Ord. No. 2004.49, 11-18-04; Ord. No. 2007.59, 10-4-07)

Sec. 17-13. Repealed.
(Ord. No. 2004.49, 11-18-04; Ord. No. 2007.59, 10-4-07)

Sec. 17-14. Repealed.
(Ord. No. 2004.49, 11-18-04; Ord. No. 2007.59, 10-4-07)

Secs. 17-15—17-19. Reserved.

ARTICLE III. LICENSING

Sec. 17-20. Repealed.
(Ord. No. 2004.49, 11-18-04; Ord. No. 2007.59, 10-4-07)

Sec. 17-21. Repealed.
(Ord. No. 2004.49, 11-18-04; Ord. No. 2007.59, 10-4-07)

Sec. 17-22. Repealed.
(Ord. No. 2004.49, 11-18-04; Ord. No. 2007.59, 10-4-07)

Sec. 17-23. Repealed.
(Ord. No. 2004.49, 11-18-04; Ord. No. 2007.59, 10-4-07)

Sec. 17-24. Repealed.
(Ord. No. 2004.49, 11-18-04; Ord. No. 2007.59, 10-4-07)

Sec. 17-25. Repealed.
(Ord. No. 2004.49, 11-18-04; Ord. No. 2007.59, 10-4-07)

Sec. 17-26. Repealed.
(Ord. No. 2004.49, 11-18-04; Ord. No. 2007.59, 10-4-07)

Sec. 17-27. Repealed.
(Ord. No. 2004.49, 11-18-04; Ord. No. 2007.59, 10-4-07)

Sec. 17-28. Repealed.
(Ord. No. 2004.49, 11-18-04; Ord. No. 2007.59, 10-4-07)

Chapter 18

MOBILE HOMES AND TRAILER COACHES[1]

Sec. 18-1. Purpose.

It is the purpose of this chapter to regulate the construction, alteration, repair and maintenance, and change in use of all mobile home parks, mobile homes, trailer parks and trailer coaches, so as to provide minimum standards of housing for the occupants thereof.
(Code 1967, § 18A-l; Ord. No. 2008.09, 2-21-08)

Sec. 18-2. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where, the context clearly indicates a different meaning:

Change in use means either of the following:

(1) A change in the use of land from the rental of mobile home spaces in a mobile home park or the rental of trailer sites in a trailer park to some other use; or

(2) The redevelopment of a mobile home park or trailer park.

Installation means the act of moving a mobile home into a mobile home park or relocating a previously installed mobile home on the same space or to another space within the same mobile home park.

Mobile home means a portable structure exceeding eight (8) feet in width and twenty-eight (28) feet in length, built on a chassis having no foundation other than wheels, jacks or blocks and containing a flush toilet, lavatory, bath or shower and kitchen facilities designed for occupancy as a dwelling unit. Any vehicle which is self-propelled or does not meet the requirements of a mobile home as set forth herein in any manner shall be designated as a trailer coach for the purpose of this chapter and shall not be permitted in a mobile home park.

Mobile home park means a parcel of land approved for development with mobile homes and accessory uses approved by the Zoning and Development Code, or as approved in a planned residential development. Existing and new parks which do not meet the requirements of the Zoning and Development Code for a mobile home district or planned residential development for mobile homes shall be classified for the purpose of this chapter as a trailer park.

Mobile home space means an approved site within a mobile home park designed for use by one mobile home and accessory uses appurtenant thereto.

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[1] **Cross references—**Buildings and building regulations, Ch. 8; Licenses, taxation and miscellaneous business regulations, Ch. 16; Planning and development, Ch. 25.

State law references—Office of Manufactured Housing, A.R.S § 41-2151 et seq.; Arizona Mobile Home Parks Residential Landlord and Tenant Act, A.R.S. § 33-1401 et seq.

Tenant means a person signing a rental agreement or otherwise agreeing with the owner, operator, lessor, or combination thereof, of a mobile home park or trailer park for the occupancy of a mobile home space or trailer site, respectively.

Trailer coach means any vehicle whether or not self-propelled used or that may be used as a conveyance upon a public street or highway on its own wheels and designed or constructed in such a manner as to permit occupancy as a dwelling or sleeping place for one or more people.

Trailer park means a parcel of land used or offered for use in whole or in part for the rental of trailer sites for parking trailer coaches mobile homes being used for living or sleeping purpose as authorized by the Zoning and Development Code, but not including mobile home parks.

Trailer sites means that portion of a trailer park set aside and designated for occupancy of a trailer coach and including the area set aside and used for parking, buildings or structures, patio covers or awnings accessory to the trailer coach and their required setbacks.
(Code 1967, § 18A-4; Ord. No. 2004.42, 1-20-05; Ord. No. 2008.09, 2-21-08)

Sec. 18-3. Applicability.

(a) Unless specifically provided for in this chapter, the construction, alteration, repair and maintenance of all mobile home parks, trailer parks and accessory buildings and structures therein shall conform to all applicable provisions of this code.

(b) This chapter shall not apply to existing nonconforming conditions in existing trailer parks nor trailer coaches, mobile homes and accessory structures legally existing outside of trailer parks prior to July 11, 1970, except as provided in the building code, as amended.
(Code 1967, § 18A-2; Ord. No. 2008.09, 2-21-08)

Sec. 18-4. Enforcement.

(a) The community development department is hereby authorized and directed to enforce all the provisions of this chapter.

(b) Whenever any mobile home or trailer coach is being used contrary to the provisions of this chapter, the community development department may order such use discontinued and the mobile home or trailer coach to be removed, relocated or otherwise made to conform with the provisions of this chapter by notice served on any person causing or permitting such use to be continued.
(Code 1967, § 18A-11; Ord. No. 97.20, 4-10-97; Ord. No. 2010.02, 2-4-10)

Sec. 18-5. Conformance with fire zone regulations.

(a) All buildings and structures within a mobile home park or trailer park and all accessory buildings or structures appurtenant to mobile homes or trailer coaches shall conform to the regulations set forth in chapter 8 of this code for the fire zone which the mobile home park or trailer park is located.

(b) Roof structures used as patio covers or awnings used as temporary shelters accessory to a mobile home or trailer coach need not conform to fire zone requirements and enclosed storage structures accessory only to mobile home or trailer sites need not conform to fire zone requirements.
(Code 1967, § 18A-3)

Sec. 18-6. Plans required.

(a) Prior to commencing construction of or alteration and additions to a mobile home park or trailer park, two (2) complete sets of plans shall be submitted to the community development department for approval. Plans shall be prepared under the direction of an engineer or architect licensed by the state and shall bear his stamp and signature.

(b) Plans and specifications shall be drawn on substantial paper and shall be of sufficient clarity to indicate the nature and extent of the work proposed and show in detail that the proposed work will conform to the provisions of all applicable city codes.

(c) Plans for a mobile home park or trailer park shall clearly indicate the identification number location and dimension of each mobile home space or trailer site in the park. The plans shall show the type and location of all utilities, the location of all accessory structures such as patios and storage and the location of parking slabs.

(d) Prior to the installation of a mobile home into a mobile home space within a mobile home park, two (2) copies of a completely dimensioned plot plan drawn to scale and in accordance with the approved development plans shall be submitted to the community development department and a permit obtained in accordance with § 18-7 subsection (b). The plot plan shall show the size and location of the proposed mobile home, the identification number and the dimensions of the approved space to be occupied.
(Code 1967, § 18A-5; Ord. No. 97.20, 4-10-97; Ord. No. 2010.02, 2-4-10)

Sec. 18-7. Conformance with applicable regulations; permits.

(a) All buildings and structures which are permitted by the Zoning and Development Code as accessory uses appurtenant to both a mobile home park and trailer park and to an individual mobile home or trailer coach shall be constructed in accordance with the applicable provisions of the building code.

(b) A zoning permit is required prior to installing a mobile home within the city and prior to relocating a mobile home to a new location within the city. A permit and fee of five dollars ($5) shall be paid for each mobile home to be installed or relocated.

(c) The installation of and alteration or addition to all plumbing work within a mobile home park or trailer park and alterations and additions to the existing plumbing within a mobile home or trailer coach shall be in accordance with the applicable provisions of the plumbing code. Wherever reference is made to trailers, trailer coaches, trailer site or trailer park within the provisions of the plumbing code, such provisions shall also apply to mobile homes, mobile home space and mobile home parks respectively.

(d) The installation of and alterations or additions to all electrical work within a mobile home park or trailer park and the alterations and additions to the existing electrical system within a mobile home or trailer coach shall be in accordance with the applicable provisions of the electrical code.

(e) The installation of and alterations or addition to all heating, ventilating, comfort cooling and refrigeration within a mobile home park or trailer park and an individual mobile home and trailer coach shall be in accordance with the applicable provisions of the mechanical code.

(f) The issuance of all permits and the collection of all permit fees shall be in accordance with the applicable provisions of this code and this chapter. A plumbing permit, an electrical permit or an installation permit which includes a gas connection may be issued only to a properly licensed person not acting in violation of any current contractor licensing law to perform such work or to the owner of the mobile home or trailer coach; provided, that the mobile home or trailer coach is occupied by such owner and the permit is issued under the terms of the plumbing code or electrical code, as applicable.

(g) The issuance of a permit or approval of plans and specifications shall not be construed to be a permit for or an approval of any violation of any of the provisions of this chapter or of this code.

(h) Every permit issued under the provisions of this chapter shall expire by limitation and become null and void if the work authorized is not commenced within sixty (60) days from the date of such permit.
(Code 1967, § 18A-6; Ord. No. 86.02, § 1, 1-9-86; Ord. No. 2004.42, 1-20-05; Ord. No. 2008.09, 2-21-08)

Sec. 18-8. Location; setbacks.

The location of all mobile homes and accessory buildings and structures within a mobile home park shall conform to the requirements of the Zoning and Development Code.
(Code 1967, § 18A-7; Ord. No. 2004.42, 1-20-05)

Sec. 18-9. Accessory buildings or structures.

(a) In addition to the special requirements set forth in this section, every accessory building or structure including but not limited to cabanas, ramadas, awnings, patio covers and carport shall be constructed in accordance with the provisions of the building code. No building nor any portion of any building shall be supported in any manner by a mobile home or trailer coach. Accessory buildings and structures conforming to fire zone requirements may abut mobile homes or trailer coaches, providing a structural separation is maintained between the mobile home or trailer coach and such accessory buildings or structures.

(b) Roof structures such as patio covers or awnings used as temporary shelter adjacent to a mobile home or trailer coach may be attached to the side of a mobile home or trailer coach; provided, that they project not more than ten (10) feet from the side of the mobile home or trailer coach and have at least the upper one-half (1/2) of the perimeter entirely open or screened with the remaining construction of nonbearing enclosing walls.

(c) Buildings and structures accessory to individual mobile homes or trailer coaches shall be constructed in such a manner so as not to prevent the removal of the mobile home or trailer coach from the site by normal towing procedures without disassembling the permanent structure. Attached carports or ramadas shall be completely open except for necessary structural supports. Covered patios and similar structures may be enclosed; provided, that the construction conforms to the requirements of the building code, except as provided in this chapter.

(d) Every room in an accessory building or structure customarily used for human habitation shall be provided with light and ventilation as required by the building code. Accessory buildings and structures attached to or abutting mobile homes and trailer coaches shall be designed and constructed so as not to block required light and ventilation to the mobile home or trailer coach.

(e) The following uses are prohibited:

(1) Accessory buildings and structures shall not be used to provide kitchen facilities for a mobile home or trailer coach; and

(2) Accessory buildings or structures shall not be occupied unless a mobile home or trailer coach occupies the individual space or site.

(Code 1967, § 18A-8)

Sec. 18-10. Park preparation and maintenance.

(a) All mobile home parks, trailer parks and individual spaces and sites therein shall be adequately graded and drained to preclude standing water or muddy conditions. All drainage water in driveways shall be conducted in paved gutters or pipes to the public street or to drainage easements under jurisdiction of the public works department.

(b) The limits of each mobile home space in a mobile home park shall be clearly marked on the ground by permanent flush stakes, markers or other suitable means. The location of the mobile home space limits on the ground shall be the same as shown on the approved plans. Installation and maintenance of the markers shall be the responsibility of the park owner.

(c) Portions of a mobile home space or trailer site not landscaped or occupied by accessory buildings or structures shall be paved with a two (2) inch thickness of plant-mixed asphaltic concrete, a three (3) inch thickness of Portland cement concrete or treated in such a manner as to eliminate dust, weeds, debris or accumulation of rubbish.

(Code 1967, § 18A-9)

Sec. 18-11. Prohibited uses.

No person shall use, permit or cause to be used for occupancy or storage purposes in a mobile home park or trailer park, a mobile home or trailer coach in any of the following instances:

(1) A mobile home or trailer coach to which are attached any rigid electrical, water, gas or sewage pipes;

(2) A mobile home or trailer coach which is permanently attached with underpinning or foundation to the ground. The space between the bottom edges of the mobile home or trailer coach may be enclosed with noncombustible or fire-retardant skirting or temporary screening, providing the underfloor area is ventilated in accordance with the requirements of the building code; or

(3) A mobile home or trailer coach which is structurally unsound, which constitutes a hazard or which does not protect its occupants against the elements.

(Code 1967, § 18A-10)

Sec. 18-12. Change in use notice.

In order to obtain approval for a zoning amendment pursuant to the Zoning and Development Code which would allow for the change in use of a mobile home park or trailer park, the applicant seeking the amendment must agree to inform all tenants, in writing, of a change in use at least ninety (90) days prior to the change in use taking effect. Failure to comply with this section shall nullify and void the applicant's zoning amendment.

(Ord. No. 2008.09, 2-21-08)

Chapter 19

MOTOR VEHICLES AND TRAFFIC[1]

ARTICLE I. DEFINITIONS, PENALTIES, LIABILITY

Sec. 19-1. Definitions.

(a) Whenever any words and phrases used in this chapter are not defined herein but are defined in the state laws regulating the operation of vehicles, the definitions therein shall be deemed to apply to such words and phrases used herein.

(b) In this chapter, unless the context otherwise requires:

(1) *Alley and alleyways* means lanes or passageways for use as a means of access to the rear of lots or buildings. Alleys and alleyways are not in any way to be considered thoroughfares.

(2) *Central business district* means all streets and portions of streets within the area described as follows. All that area bounded by the salt river on the north, to 10th Street on the south and from Myrtle Avenue on the east to Maple Avenue on the west.

(3) *Commercial vehicle* means every vehicle designed, maintained or used primarily for transportation of property.

(4) *Curb loading zone* means a space adjacent to a curb reserved for the exclusive use vehicles during the loading or unloading passengers or materials.

(5) *Motorcade* means an organized procession containing twenty-five (25) or more vehicles, except funeral processions, upon any public street, sidewalk or alley.

[1]**Cross references—**Bicycles, Ch. 7; vehicular noise, § 20-9; motor vehicles in parks, § 23-37; parking on public ways by mobile merchants, § 24-29; Towing, Ch. 32.

State law reference—Uniform act regulating traffic on highways, A.R.S. § 28-601 et seq.

(6) *Motorized play vehicle* means a coaster, scooter, any other alternatively fueled device or other motorized vehicle that is self-propelled by a motor or engine and which is not otherwise defined in Arizona Revised Statutes, Title 28, as a "motor vehicle," "motor-driven cycle" or "motorized wheelchair."

(7) *Motorized skateboard* means a self-propelled device which has a motor or engine, a deck on which a person may ride and at least two (2) wheels in contact with the ground and which is not otherwise defined in Arizona Revised Statutes, Title 28, as amended, as a "motor vehicle," "motor-driven cycle" or "motorized wheelchair."

(8) *Operator* means a person who operates or is in actual physical control of a motorized play vehicle or a motorized skateboard upon a public roadway, sidewalk, right-of-way, park, bicycle path or any other public property used for the operation of motor vehicles.

(9) *Owner* means a person who holds the legal title to a motorized play vehicle or motorized skateboard, or any person who is a lessee, conditional vendee or mortgagor of a motorized play vehicle or motorized skateboard with a right to immediate possession.

(10) *Parade* means any march or procession consisting of people, animals or vehicles, or combination thereof, except funeral processions, upon any public street, sidewalk or alley, which does not comply with normal and usual traffic regulations or controls.

(11) *Parkway* means that portion of a street between the curb lines of a roadway and the adjacent property lines.

(12) *Rights-of-way* means all the property used as a public thoroughfare and lying between the exterior boundary lines of any area granted to or received by the city by grant, gift, easement, deed, dedications or operations of law for street, alley, walk or utility purposes.

(13) *Sidewalk* means that portion of a street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines, intended for use of pedestrians.

(14) *Stand or standing* means the halting of a vehicle, whether occupied or not, otherwise than for the purpose of and while actually engaged in receiving or discharging passengers.

(15) *Stop,* when required, means complete cessation from movement.

(16) *Stop* or *stopping*, when prohibited, means any halting, even momentarily, of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic-control sign or signal.

(17) *Traffic division* means the traffic division of the police department of this city, or in the event a traffic division is not established, then such term, whenever used herein, shall be deemed to refer to the police department of this city.

(18) *Traffic engineer* means the public works director of the city or his designee.

(Ord. No. 86.45, 7-10-86; Ord. No. 95.33, 9-21-95; Ord. No. 98.22, 5-14-98; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Sec. 19-2. Civil sanctions.

Any person violating any of the provisions of this chapter shall be liable for the imposition of a civil sanction not to exceed two hundred fifty dollars ($250), unless another penalty is specified.

(Ord. No. 86.45, 7-10-86; Ord. No. 94.33, 12-8-94; Ord. No. 95.11, 4-13-95)

Sec. 19-3. Owner's liability for parking offenses.

The registered owner(s) of any vehicle which has been parked in violation of any of the provisions of this chapter or any other city ordinance prohibiting or restricting parking shall be prima facie responsible for such violation and subject to penalty therefor.

(Ord. No. 86.45, 7-10-86)

Sec. 19-4. Penalties authorized for failure to satisfy judgment; immobilization; towing and impoundment.

(a) In addition to the fines provided in § 19-2, where a motor vehicle has been found parked in violation of the provisions of this chapter, and judgment has been entered and remains unsatisfied, the court may order the registration number of the vehicle placed on a list of vehicles which the police department is authorized to immobilize by installing on such vehicle a wheel clamp designed to restrict the normal movement of such vehicle.

(b) Whenever a vehicle is immobilized, the police officer or employee of the city installing the wheel clamp shall conspicuously attach to the vehicle a notice that the vehicle has been immobilized by the city for failure to satisfy outstanding judgment, that release from such immobilization may be obtained at a designated place, and that unless arrangements are made for release of the vehicle within a reasonable time, the vehicle may be towed and impounded at the direction of the city. Reasonable charges may be made for releasing the wheel clamp from the vehicle or for towing and impounding such vehicle.

(c) It shall be a misdemeanor for any person to tamper with or remove, without police department authority, a wheel clamp which has been attached to a vehicle pursuant to this section.

(Ord. No. 86.45, 7-10-86; Ord. No. 88.06, 2-11-88)

Sec. 19-5. Parking violations; notice required; judgment by default.

Whenever a vehicle without a driver is found parked in violation of the provisions of this chapter, any police officer, municipally approved private contractor, police aide or employee of the city designated to give such notices shall take the vehicle's registration number, and may take any other information displayed on the vehicle which may identify its user, and shall conspicuously attach to the vehicle a notice of parking violation on a form supplied by the police department. The notice of parking violation shall include the date, time and location of the violation, the vehicle registration number, reference to the city code provisions violated, and a warning that failure either to pay the fine indicated on the notice or to appear at the location indicated on the notice of parking violation and otherwise dispose of the charge within seven (7) calendar days from the date on which the notice was issued may result in a judgment by default being entered against the registered owner of the vehicle, and that the vehicle may thereafter be subject to immobilization by the installation of a wheel clamp and to towing and impoundment pursuant to § 19-4. The notice of parking violations attached to the vehicle pursuant to this section shall be deemed constructive notice to the registered owner that the vehicle may be immobilized and impounded.
(Ord. No. 86.45, 7-10-86; Ord. No. 2010.34, 9-16-10; Ord. No. 2012.03, 1-19-12)

Secs. 19-6—19-10. Reserved.

ARTICLE II. TRAFFIC ADMINISTRATION AND ENFORCEMENT

Sec. 19-11. Police administration generally.

The police department shall enforce the traffic regulations of this city and all of the state vehicle laws applicable to street traffic in this city, to make arrest for traffic violations, to investigate accidents and to cooperate with the traffic engineer and other officers of the city in the administration of the traffic regulations and in the developing ways and means to improve traffic conditions.
(Ord. No. 86.45, 7-10-86)

Sec. 19-12. Powers and duties of traffic engineer.

(a) It shall be the duty of the traffic engineer to determine the installation and proper timing and maintenance of traffic-control devices, to conduct engineering analyses of traffic accidents and to devise remedial measures, to conduct engineering investigation of traffic on the streets and highways of this city, to cooperate with other officials in the development of ways and means to improve traffic conditions, and to carry out such additional powers and duties as may be imposed by chapter.

(b) Such traffic-control devices shall conform to the *Manual on Uniform Traffic Control Devices* as adopted by the Arizona Highway Commission.
(Ord. No. 86.45, 7-10-86)

Sec. 19-13. Drivers' files to be maintained.

The police department shall maintain a suitable record of all traffic accidents, written warnings, arrests, convictions and complaints reported for each driver, which shall be filed alphabetically under the name of the driver concerned. Such records shall be kept for a period of five (5) years.
(Ord. No. 86.45, 7-10-86)

Sec. 19-14. Emergency and experimental measures.

The traffic engineer is hereby empowered to make regulations necessary to make effective the provisions of the traffic ordinances of this city and to make and enforce temporary or experimental regulations to cover emergencies or special conditions. The traffic engineer may erect and test traffic-control signal markings and signs that are under actual conditions of traffic.
(Ord. No. 86.45, 7-10-86)

Sec. 19-15. Authority of police and fire medical rescue department officials.

It shall be the duty of the officers of the police department or such officers as are assigned by the chief of police to enforce all street traffic laws of this city and all of the state vehicle laws applicable to street traffic in this city. Officers of the police department or such officers as are assigned by the chief of police are hereby authorized to direct all traffic by voice, hand or signal in conformance with the traffic laws. Provided, however, that, in the event of a fire or other emergency or to expedite traffic or to safeguard pedestrians, officers of the police department may direct traffic as conditions may require, notwithstanding the provisions of the traffic regulations. Officers of the fire medical rescue department, when at the scene of a fire, may direct or assist the police in directing traffic thereat, or in the immediate vicinity.
(Ord. No. 86.45, 7-10-86; Ord. No. O2014.14, 3-20-14)

Sec. 19-16. Obedience to police and fire medical rescue department officials.

No person shall willfully fail or refuse to comply with any lawful order or direction of a police officer or fire medical rescue department official.
(Ord. No. 86.45, 7-10-86; Ord. No. O2014.14, 3-20-14)

Sec. 19-17. Persons propelling pushcarts or riding animals to obey traffic regulations.

Every person propelling any pushcart or riding an animal upon a roadway, and every person driving any animal-drawn vehicle, shall be subject to the provisions of this chapter insofar as applicable.
(Ord. No. 86.45, 7-10-86)

Sec. 19-18. Use of coasters, roller skates, skateboards and similar devices restricted.

(a) No person upon roller skates or riding in or by means of any coaster, skateboard, toy vehicle, go-carts under five (5) horsepower or similar device shall go upon any roadway except while crossing a street in a crosswalk or implied crosswalk, and when so crossing, such a person shall be granted all of the rights and shall be subject to all the duties applicable to pedestrians. This subsection shall not apply upon any street while set aside as a play street.

(b) No person shall operate a skateboard:

(1) On any public property where such activity is specifically prohibited by appropriate posting, except as may be authorized above; or

(2) In an unsafe manner so as to infringe upon the safety of themselves or the safety of other persons or property.

(Ord. No. 86-45, 7-10-86; Ord. No. 90.18, § 1, 4-12-90)

Sec. 19-19. Public employees to obey traffic regulations.

The provisions of this chapter shall apply to the driver of any vehicle owned by or used in the service of the United States Government, this state, county or city, and it shall be unlawful for any such driver to violate any of the provisions of this chapter.
(Ord. No. 86.45, 7-10-86)

Sec. 19-20. Application of traffic laws.

(a) All traffic laws shall apply to persons riding motorized play vehicles and motorized skateboards. Every person operating a motorized play vehicle or motorized skateboard upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle by the laws of this state declaring rules of the road applicable to vehicles, or by the traffic regulations of this city applicable to the driver of a vehicle, except as to special regulations in this chapter and except as to those provisions which by their nature can have no application.

(b) This section shall not be construed to require the licensing or registration of motorized play vehicles or motorized skateboards, or the carrying of insurance covering accidents involving motorized play vehicles or motorized skateboards.

(c) It is unlawful for any person operating a motorized play vehicle or motorized skateboard not to obey the instructions of official traffic-control signals, signs and other traffic direction devices applicable to vehicles, unless otherwise directed by a police officer.
(Ord. No. 98.22, 5-14-98)

Sec. 19-21. Responsibility of parents, guardians and custodians.

No person shall, if a parent, guardian or custodian of a child, authorize or knowingly permit any child to violate this article.
(Ord. No. 98.22, 5-14-98)

Sec. 19-22. Prohibited operation.

No person shall operate a motorized play vehicle or motorized skateboard:

(1) On any sidewalk in the city, except for use in crossing such sidewalk by the most direct route to gain access to any public or private road or driveway;

(2) In any city parking structure or city park, except for use on public roadways within such park;

(3) On any public property that has been posted or designed by the owner of such property as an area prohibiting "skateboards";

(4) On any public roadway consisting of a total of four (4) or more marked traffic lanes, or having an established speed limit of greater than twenty-five (25) miles per hour; or

(5) On any private property of another, or any public property which is not held open to the public for vehicle use, without the written permission of the owner, the person entitled to immediate possession of the property, or the authorized agent of either.
(Ord. No. 98.22, 5-14-98)

Sec. 19-23. General operating restrictions.

(a) No child under the age of fourteen (14) shall operate a motorized play vehicle or motorized skateboard.

(b) No person shall operate a motorized play vehicle or motorized skateboard in excess of the posted speed limit or at a speed greater than is reasonable and prudent under the circumstances then existing.

(c) The operator of a motorized play vehicle or motorized skateboard, approaching a sidewalk, bicycle path, bicycle lane or multi-use path in order to cross such, shall yield the right-of-way to all other users.

(d) Motorized play vehicles and motorized skateboards may be operated on a path or lane that is designated as a bicycle path or lane by state or local authorities. However, motorized play vehicles and motorized skateboard operators on said bicycle path or lane shall yield at all times to other users.

(e) No operator shall allow passengers when the motorized play vehicle or motorized skateboard is in operation or motion.

(f) No person operating or riding upon a motorized play vehicle or motorized skateboard shall attach themselves in any manner to any other vehicle.

(g) No person shall operate a motorized play vehicle or motorized skateboard while carrying any package, bundle or article which prevents the operator from keeping both hands upon the steering mechanism at all times.

(h) No person, other than the owner, shall operate a motorized play vehicle or motorized skateboard without the written permission of the owner.

(i) No person shall operate a motorized play vehicle or motorized skateboard that has been structurally altered from the original manufacturer's design.

(j) No person shall operate a motorized play vehicle or motorized skateboard in a crosswalk.
(Ord. No. 98.22, 5-14-98)

Sec. 19-24. Operating restrictions on roadway.

(a) A person operating a motorized play vehicle or motorized skateboard on a roadway at less than the normal speed of traffic, at the time and place and under the then existing conditions, shall ride as close as practicable to the right-hand curb or edge of the roadway, except under the following conditions and when the movement can be made safely:

(1) If overtaking and passing a bicycle or vehicle proceeding in the same direction;

(2) In preparing for a left turn at an intersection or into a private roadway or driveway;

(3) If reasonably necessary to avoid hazardous conditions ahead in the roadway; or

(4) If the lane in which the person is operating the motorized play vehicle or motorized skateboard is too narrow for a motorized play vehicle or motorized skateboard and a bicycle or another vehicle to travel safely side by side within the lane.

(b) No operator of a motorized play vehicle or motorized skateboard shall transport extra fuel in a separate container or alter the fuel reservoir from the original manufacturer's design. This includes the prohibition of physically attaching fuel packs or containers to the operator's person.

(c) Persons operating motorized play vehicles or motorized skateboards on the roadway shall not ride more than two (2) abreast.
(Ord. No. 98.22, 5-14-98)

Sec. 19-25. Required safety equipment.

(a) No person shall operate a motorized play vehicle or motorized skateboard without a head lamp emitting a beam and a red rear reflector anytime from sunset to sunrise, or any other time when there is not sufficient light to render clearly discernible, persons or vehicles on the roadway.

(1) A head lamp shall emit a white light and be visible from the front at a distance no less than five hundred (500) feet;

(2) A rear red reflector shall be visible when illuminated by a vehicle head lamp from a distance of not less than three hundred (300) feet; and

(3) A rear red lamp visible from a distance of five hundred (500) feet to the rear may be used in addition to the rear red reflector.

(b) No person shall operate a motorized play vehicle or motorized skateboard unless it is equipped with a brake which enables the operator to make a braked wheel(s) skid on pavement.

(c) Any operator of a motorized play vehicle or motorized skateboard under the age of eighteen (18) years being operated on a roadway shall at all times wear a protective helmet on his or her head in an appropriate and safely secured manner. The helmet shall meet minimum standards of testing and safety inspected by the bicycle industry.

(d) No person shall operate a motorized skateboard without wearing footwear. The footwear must have a sole and completely cover the feet and toes.
(Ord. No. 98.22, 5-14-98)

Sec. 19-26. Violations.

Violations of any of the sections of this article concerning motorized play vehicles and motorized skateboards are designated as civil traffic violations and shall be prosecuted in the same manner as provided by law for other civil traffic violations.
(Ord. No. 98.22, 5-14-98)

Sec. 19-27. Repeal of conflicting ordinances.

All ordinances and parts of ordinances in conflict with the provisions of this ordinance or any part of the code adopted herein by reference, are hereby repealed.
(Ord. No. 98.22, 5-14-98)

Secs. 19-28—19-30. Reserved.

ARTICLE III. TRAFFIC-CONTROL DEVICES

Sec. 19-31. Authority to install.

The traffic engineer shall place and maintain traffic control signs and devices when and as required under the traffic ordinances. He may place and maintain such additional traffic-control devices as he may deem necessary to regulate traffic under the ordinances of this city or under state law, or to guide or warn traffic. Traffic signals shall be approved in advance by the city council.
(Ord. No. 86.45, 7-10-86)

Sec. 19-32. When traffic devices required for enforcement purposes.

No provision of this chapter for which signs are required shall be enforced against an alleged violation if at the time and place of the alleged violation an official sign is not in proper position and sufficiently legible to be seen by an ordinarily observant person. Whenever a particular section does not state that signs are required, such section shall be effective even though no signs are erected or in place.
(Ord. No. 86.45, 7-10-86)

Sec. 19-33. Signs prohibiting the movement of trucks.

No person shall drive, ride, stop, stand or park any truck upon any street, roadway or highway or any portion thereof in violation of any restriction posted on traffic-control signs or markings.
(Ord. No. 86.45, 7-10-86)

Sec. 19-34. Authority to change, alter, etc., traffic devices.

Any traffic-control devices, signs, signals or markings, or rulings, decisions or determinations heretofore or hereinafter erected or made by the traffic engineer or by the city council, pursuant to this or any other ordinance of the city, may, at any time, be changed, altered, modified, rescinded or abolished by a vote of a majority of the council, without the necessity of an amending ordinance.
(Ord. No. 86.45, 7-10-86)

Secs. 19-35—19-40. Reserved.

ARTICLE IV. OPERATION OF VEHICLES

Sec. 19-41. Authority to limit turns.

The traffic engineer is authorized to determine those intersections at which drivers of vehicles shall not make right or left turns and shall place proper signs so directing at intersections. Such regulation of turns may be limited to certain hours, at the discretion of the traffic engineer.
(Ord. No. 86.45, 7-10-86)

Sec. 19-42. Entering an intersection.

No person shall enter an intersection or a marked crosswalk unless there is sufficient space on the other side of the intersection or crosswalk to accommodate the vehicle he is operating without obstructing the passage of other vehicles or pedestrians, notwithstanding any traffic-control indication to proceed.
(Ord. No. 86.45, 7-10-86)

Sec. 19-43. Parades and motorcades.

(a) It shall be unlawful for any person to conduct a parade or motorcade in or upon any public street, sidewalk or alley in the city or knowingly participate in any such parade or motorcade unless and until a permit to conduct such a parade or motorcade has been issued by the police chief or, as hereinafter provided, from the deputy city manager.

(b) No permit shall be issued authorizing the conduct of a parade or motorcade which the police chief finds is proposed to be held for the sole purpose of advertising any product, goods, wares, merchandise or event, and is designed to be held purely for private profit.

(c) No person shall knowingly join or participate in any parade or motorcade conducted under permit from the police chief in violation of any of the terms of said permit, nor knowingly join or participate in any permitted parade or motorcade without the consent of the permittee nor in any manner interfere with its progress or orderly conduct.

(d) Any person who wants to conduct a parade or motorcade shall apply to the police chief for a permit at least thirty (30) days in advance of the date of the proposed parade or motorcade. If a permit is not timely submitted, it may be denied. The application for such permit shall be in writing on a form approved by the police chief. In order that adequate arrangements may be made for the proper policing of the parade or motorcade, the application shall contain the following information:

(1) The name of the applicant, the sponsoring organization, the parade or motorcade chairman and the address and telephone numbers of each;

(2) The purpose of the parade or motorcade, the date when it is proposed to be conducted, the location of the assembly area, the location of the disbanding area, the route to be traveled and the approximate time when the parade or motorcade will assemble, start and terminate;

(3) A description of the individual floats, marching units, vehicles, bands, including a description of any sound-amplification equipment to be used; and

(4) Such other information as the police chief may deem reasonably necessary.

(e) The police chief shall distribute the permit application to the traffic engineer who shall submit findings pursuant to paragraph (f) of this section and his recommendations for specifications under paragraph (h) of this section.

(f) The police chief shall issue a parade or motorcade permit conditioned upon the applicant's written agreement to comply with the terms of such permit unless the police chief finds that:

(1) The time, route and size of the parade or motorcade will disrupt to an unreasonable extent the movement of traffic;

(2) The parade or motorcade is of a size or nature that requires the diversion of so great a number of police officers of the city to properly police the line of movement and the areas contiguous thereto that allowing the parade or motorcade would deny reasonable police protection to the city; and

(3) Such parade or motorcade will interfere with another parade or motorcade for which a permit has been issued.

(g) The police chief shall deny an application for a parade or motorcade permit and notify the applicant of such denial where:

(1) The police chief makes any finding as set forth in paragraph (f);

(2) The information contained in the application is found to be false or nonexistent in any material detail; and

(3) The applicant refuses to agree to abide by or comply with all conditions of the permit.

(h) In each permit the police chief shall specify:

(1) The assembly area and time therefor;

(2) The start time;

(3) The minimum and maximum speed;

(4) The route of the parade or motorcade;

(5) What portions of streets to be traversed may be occupied by such parade or motorcade;

(6) The maximum number of platoons or units and the maximum and minimum intervals of space to be maintained between the units of such parade or motorcade;

(7) The maximum length of such parade or motorcade in miles or fractions thereof;

(8) The disbanding area, and disbanding time;

(9) The number of persons required to monitor the parade or motorcade;

(10) The number and type of vehicles, if any;

(11) The material and maximum size of any banner, placard or carrying device therefor;

(12) That the materials used in the construction of floats used in any parade shall be of fire-retardant materials and shall be subject to such requirements concerning fire safety as may be determined by the fire medical rescue department chief;

(13) That permittee shall advise all participants in the parade or motorcade, either orally or by written notice, of the terms and conditions of the permit prior to the commencement of such parade or motorcade;

(14) That amplification of sound permitted to be emitted from sound trucks or bullhorns be fixed and not variable;

(15) That the parade or motorcade continues to move at a fixed rate of speed and that any willful delay or willful stopping of said parade or motorcade, except when reasonably required for the safe and orderly conduct of the parade or motorcade, shall constitute a violation of the permit; and

(16) Such other requirements as are found by the police chief to be reasonably necessary for the protection of persons or property.

(i) Upon a denial by the police chief of an application made pursuant to paragraph (d) of this section, the applicant may appeal from the determination of the police chief within five (5) days thereafter to the deputy city manager by filing a written notice of appeal for hearing by the deputy city manager, within three (3) working days of his receipt of the written notice of appeal. Upon such appeal, the deputy city manager may reverse, affirm, or modify in any regard the determination of the police chief.

(j) Immediately upon the granting of a permit for a parade or motorcade, the police chief shall send a copy thereof to the following:

(1) The traffic engineer;

(2) The fire medical rescue department chief; and

(3) deputy city manager.

(k) Any permit for a parade or motorcade issued pursuant to this chapter may be summarily revoked by the police chief at any time when, by reason of disaster, public calamity, riot or other emergency, the police chief determines that the safety of the public or property requires such revocation. Notice of such action revoking a permit shall be delivered in writing to the permittee by personal service or by certified mail.
(Ord. No. 86.45, 7-10-86; Ord. No. O2014.14, 3-20-14; Ord. No. O2014.27, 6-26-14)

Sec. 19-44. Overweight/oversize vehicle regulations.

(a) *Overweight vehicles*. The maximum gross weight of vehicles operated upon city streets shall not exceed the gross weights proscribed in the appropriate table of weights applicable to highways under jurisdiction of the State of Arizona by §§ 28-1098, 28-1099 and 28-1100 of the Arizona Revised Statutes.

(b) *Oversize vehicles*. The maximum height and length of vehicles operated upon city streets shall not exceed the height and length proscribed to highways under the jurisdiction of the State of Arizona by §§ 28-1093, 28-1094, 28-1095 and 28-1097 of the Arizona Revised Statutes.

(c) *Exceptions*. The prohibitions of paragraphs (a) and (b) shall not apply to vehicles operating pursuant to a special permit issued pursuant to § 19-45.
(Ord. No. 86.45, 7-10-86)

Editor's note—Effective 10-1-97, A.R.S., Title 28 was renumbered. The above section was amended to reflect the correct statutes.

Sec. 19-45. Special permits for overweight and overheight vehicles.

(a) A special permit shall be required to move any oversize or overweight vehicle, equipment, building or material on city streets.

(b) The traffic engineer or designee will issue the special permit upon payment in full of the fees specified in paragraph (c).

(c) A fee shall be assessed for each permit issued in accordance with the provisions of this section for excess size. A fee shall be assessed for each permit issued in accordance with the provisions of this section for excess weight. If a permit is requested for a motor vehicle which is in excess of both size and weight, the fees applicable for an excess weight permit shall be assessed (see Appendix A).

(d) No fees shall be assessed for any permit issued in accordance with this section for the movement of vehicles or combination of vehicles owned by or subject to a special permit issued by the United States government, the state, any county, city or town.

(e) Such permit shall be carried in the vehicle or combination of vehicles to which it refers and shall be open to inspection by any police officer or authorized agent of any authority granting the permit, and no person or corporation or other business entity shall violate any of the terms or conditions of the special permit.
(Ord. No. 86.45, 7-10-86; Ord. No. 2006.48, 9-7-06)

Sec. 19-46. Liability for damage.

(a) Any person driving an overheight or overweight vehicle upon any street within the city shall be liable for all damage to any street, traffic signal or sign. The person driving such vehicle shall be liable whether the operation is illegal under § 19-44 or authorized by a special permit issued under § 19-45.

(b) When the driver is not the owner of the vehicle, but is so operating, driving or moving the same with the express or implied permission of the owner, then the owner and driver shall be jointly and severally liable for any damage.
(Ord. No. 86.45, 7-10-86)

Sec. 19-47. Penalties.

(a) A person who violates any of the provisions of this section is subject to a civil sanction unless the ordinance defining the offense provides for a different classification. When the driver is not the owner of the vehicle but is so operating, driving or moving the same with the express or implied permission of the owner or the vehicle was loaded with the express or implied permission of the owner, then the driver and the owner shall be subject to any penalty authorized by this section.

(b) Notwithstanding the provision of paragraph (c) of this section, a conviction for a violation of § 19-44 in which the weight is two thousand five hundred one (2,501) pounds or greater is a misdemeanor.

(c) The owner and the driver of a vehicle which violates any provision of § 19-44 is subject to a civil sanction. A second violation of said section within six (6) months of the preceding conviction is a class 3 misdemeanor. A third violation of said section within one year is a class 2 misdemeanor. In addition to any sanction, penalty or term of imprisonment which a court may impose, a court shall fine a person the amount which is set forth in the following table:

If the excess weight is: The minimum fine or civil sanction is:

	Class 3	*Class 2*	*Class 1*
1,001 to 1,250 pounds	$ 50.00	$ 75.00	$ 100.00
1,251 to 1,500	100.00	150.00	200.00
1,501 to 2,000	150.00	225.00	300.00
2,001 to 2,500	200.00	300.00	400.00
2,501 to 3,000	200.00	300.00	500.00
3,001 to 3,500			600.00
3,501 to 4,000			660.00
4,001 to 4,500			720.00
4,501 to 4,750			760.00
4,751 to 5,000			800.00
5,001 to 5,250			840.00
5,251 to 5,500			880.00
5,501 to 5,750			920.00
5,751 to 6,000			960.00
6,001 and over			1,000.00

(d) If any officer finds that the person has violated only the axle weight limitation and not the total weight limitation, the officer shall request the driver to reload the vehicle to comply with the axle weight limitation and if the driver so complies he shall not be subject to arrest or fine. If the driver does not comply with the request of the officer to reload, the driver shall be subject to a civil sanction.
(Ord. No. 86.45, 7-10-86)

Sec. 19-48. Driving across traffic marking or through barricades.

No person shall drive a vehicle across freshly painted street markings, when the same are marked by flags or traffic cones, or remove or drive through barricades authorized by the city to be placed in streets or alleys.
(Ord. No. 86.45, 7-10-86)

Sec. 19-49. Driving upon certain real property.

(a) For the purposes of this section, the following words and their derivations shall have the meaning given herein.

(1) *Motor vehicle* shall mean any self-propelled vehicle.

(2) *Vehicle* shall mean any device in, upon or by which any person or property is or may be transported or drawn.

(3) *Unstabilized surface* shall mean a ground surface with exposed dirt that is not covered by concrete, gravel, grass or other means of stabilization.

(b) No person shall operate a motor vehicle upon real property situated in the city other than on a road, street, highway or lawful easement; provided, that this section shall not be deemed to prohibit the operation of motor vehicles upon real property under the following circumstances:

(1) Operation of licensed or unlicensed motor vehicles by the property owner, his immediate family, lessee or invitee, where such operation is reasonably incidental to the use and enjoyment of substantial property rights and does not violate other applicable laws;

(2) Lawn and garden maintenance equipment;

(3) Motor vehicles customary and incidental to farming or ranching activities when the operation of such vehicles is conducted on property properly zoned and used for such activities;

(4) Temporary construction vehicles whose activities are reasonably necessary for the development, repair or maintenance of property;

(5) Governmental vehicles when reasonably operated to perform a governmental function; or

(6) Vehicles of an electric power, natural gas, telephone, water utilities or other utility company when reasonably operated to facilitate the delivery of utility services.

(Ord. No. 86.45, 7-10-86; Ord. No. 2010.27, 7-1-10)

Sec. 19-50. Hauling waste fill or waste excavation material.

(a) It shall be unlawful to haul or cause to be hauled, except by special permit, waste fill or waste excavation material on the streets and highways within the city when the quantity of waste fill or waste excavation material to be hauled exceeds five thousand (5,000) cubic yards for the project or when the duration of the haul is more than ten (10) working days. Written application for a special permit and the issuance of a special permit will be processed by the city engineer, who will place upon the special permit such conditions as may be reasonably necessary to prevent creation of a nuisance or hazard to the public. Such conditions may include, but not be limited to:

(1) Designation of specific routes to be used;

(2) Designation of specific haul hours or days;

(3) Designation of specific locations of access to and from public right-of-way;

(4) Provision for safety precautions such as the use of barricades, warning or traffic signs, flagmen or police officers for traffic control;

(5) Assumption of responsibility to remove any spillage of waste fill or waste excavation material from streets or sidewalks or to pay the city twice the cost of removal; or

(6) Any violation of the terms or conditions of the permit shall be sufficient grounds for the city engineer to revoke the permit.

(b) Notwithstanding the provisions of paragraph (a) above, it shall be unlawful to cause or allow fill, excavated material, construction debris, mud, dirt, rock, sand, gravel, concrete or asphalt to be spilled, dumped or tracked onto public streets, alleys or sidewalks.

(c) The city council by resolution will set the fee to be charged by the city engineer for the special permit for hauling waste fill or waste excavation material in the city.

(d) Any person who owns, leases or occupies property in connection with which fill, excavated material, construction debris, mud, dirt, rock, sand, gravel, concrete or asphalt is hauled or caused or allowed to be spilled, dumped or tracked onto public streets, alleys or sidewalks shall be subject to any penalty authorized by this chapter, by article VI of chapter 12, or the general penalty provision of the city code, § 1-7.

(e) Any person who contracts to do construction work on property in connection with which fill, excavated material, construction debris, mud, dirt, rock, fill, gravel, concrete or asphalt is hauled or caused or allowed to be spilled, dumped or tracked onto public streets, alleys or sidewalks shall be subject to any penalty authorized by this chapter, by article VI of chapter 12, or the general penalty section of the city code, § 1-7.
(Ord. No. 88.13, 6-9-88; Ord. No. 2004.14, 4-29-04)

Sec. 19-51. Sound amplification systems in vehicles; limitations on use.

(a) Except as authorized by law, no person shall operate or permit the operation of any sound amplification system in or on a vehicle which:

(1) Can be heard outside the vehicle from fifty (50) or more feet; or

(2) Annoys or disturbs the quiet, comfort or repose of any person in the vicinity; unless the system is being operated to request assistance of an emergency nature or to warn of a hazardous situation.

(b) In addition to other specific exemptions authorized by this chapter, subsection (a) of this section shall not apply to:

(1) An authorized emergency vehicle;

(2) A vehicle operated by a gas, electric, communications or water utility company, or governmental entity; or

(3) A vehicle used for advertising in a parade or in a political or other special event permitted by the city.

(c) For the purpose of this section, "sound amplification system" means any device, instrument or system, whether electrical or mechanical or otherwise, for amplifying sound or for producing or reproducing sound, including but not limited to any radio, stereo, musical instrument, phonograph, or sound or musical recorder or player.
(Ord. No. 91.38, 11-14-91)

Sec. 19-52. Cruising prohibited, exceptions, penalties.

(a) Except as authorized by law, no person shall cruise, or permit a motor vehicle under his care, custody or control to cruise, in an area which has been posted as "no cruise zone" or "no cruising".

(b) For the purpose of this section:

(1) *Cruise* means to occupy any motor vehicle which has been driven past a traffic control point on a street or alley three (3) times in either direction within a two-hour period between 8:00 p.m. and 4:00 a.m. in a no cruise zone.

(2) *Traffic control point* means a location along a public street or alley utilized by the city in a "no cruise zone" as an observation point to monitor traffic conditions for potential violations of this section.

(3) *No cruise zone* means those streets and alleys so posted by the city traffic engineer within the city's central commercial district and in such others areas as may be designated by the city manager or his designee.

(c) Every "no cruise zone" shall be posted with sufficient signs to provide notice that cruising is prohibited.

(d) This section shall not apply to:

(1) Any government vehicle or ambulance operated in an official capacity; or

(2) Any licensed public transportation vehicle or common carrier and any business courtesy, commercial or other vehicle when operated for commercial or business purposes.

(Ord. No. 91.39, 11-14-91; Ord. No. 92.36, 8-20-92)

Sec. 19-53. U-turns.

The driver of a vehicle shall not turn such vehicle so as to proceed in the opposite direction upon any street unless such movement can be made in safety and without interfering with or impeding other traffic.

(Ord. No. 92.35, 8-20-92)

Secs. 19-54—19-60. Reserved.

ARTICLE V. SPEED REGULATIONS

Sec. 19-61. Generally.

The state laws regulating the speed of vehicles shall be applicable upon all roadways within this city, except when altered by resolution of the city council and as authorized by § 28-703, Arizona Revised Statutes and this chapter, in which event it shall be prima facie unlawful for any person to drive a vehicle at a speed in excess of any speed so declared when signs are in place giving notice thereof.
(Ord. No. 86.45, 7-10-86)

Sec. 19-62. Limits in through alleys.

It shall be unlawful for any person to operate a motor vehicle through any alley or any part thereof within the city limits at a speed greater than fifteen (15) miles per hour.
(Ord. No. 86.45, 7-10-86)

Sec. 19-63. Speed limits enumerated.

It is hereby determined upon the basis of an engineering and traffic investigation by the traffic engineer that the speed limit permitted by state law on the following streets or intersections is greater than, or less than, is reasonable under existing conditions, and it is hereby declared that the maximum speed limits shall be as hereinafter set forth on those streets, parts of streets or intersections herein designated at the times specified when signs are erected giving notice thereof:

(1) *The prima facie speed limit on the following streets, parts of streets or intersections is thirty (30) miles per hour at all times except as otherwise posted:*

Ash Avenue from Rio Salado Drive to University Drive
Auto Drive from Priest Drive to Hardy Drive
Autoplex Loop from Elliot Road to Priest Drive
College Avenue from Alameda Drive to Superstition Freeway
Commerce Drive from Emerald Drive to Priest Drive
Continental Drive from Sixty-Eighth Street to McAllister Avenue
Drivers Way from Auto Drive to Auto Drive
Eighth Street from Rural Road to McClintock Drive
Fifth Street from Farmer Avenue to College Avenue
Hardy Drive from First Street to Broadway Road
Hardy Drive from Southern Avenue to Guadalupe Road
Hardy Drive from Warner Road to 0.5 miles south of Warner Road
Harl Avenue from Elliot Road to 0.75 miles north of Elliot Road
Jewel Street from Emerald Drive to Warner Road
Lakeshore Drive from Baseline Road to Guadalupe Road
Mill Avenue from 0.14 miles north of First Street to University Drive
Mill Avenue from Baseline Road to 0.07 miles south of Baseline Road
Rio Salado Parkway from 0.125 miles east of Hardy Drive to Mill Avenue
Southshore Drive from Rural Road to McClintock Drive
Third Street from Fifty-Second Street to Priest Drive
Veteran’s Way from College Avenue to University Drive

(2) *The prima facie speed limit on the following streets, parts of streets or intersections is thirty-five (35) miles per hour at all times except as otherwise posted:*

Alameda Drive from I-10 to Roosevelt Street
Apache Boulevard from Thirteenth Street to east city limits
Broadway Road from Farmer Avenue to 200 feet east of Mill Avenue
College Avenue from north city limits to Curry Road
Continental Drive from McAllister Avenue to east city limits
Fifth Street from Smith Road to Price Road
Fifty-Second Street from north city limits to 0.05 miles north of Broadway Road
Fourteenth Street from 0.05 miles east of Forty-Eighth Street to Priest Drive
Forty-Eighth Street Frontage Road from north city limits to 0.05 miles north of Fourteenth Street
Hardy Drive from Broadway Road to Southern Avenue
Hardy Drive from Grove Parkway to Warner Road
Guadalupe Road from 150 feet east of McKemy Street to Kyrene Road
Guadalupe Road from 200 feet west of Terrace Road to 200 feet east of Lakeshore Drive
Lakeshore Drive from Rural Road to Baseline Road
McClintock Drive from Alameda Drive to Southern Avenue
Mill Avenue from 0.17 miles south of Curry Road to 0.14 miles north of First Street
Mill Avenue from University Drive to 200 feet south of Broadway Road
Miller Road from McKellips Road to Weber Drive
Priest Drive from Carmen Street to Grove Parkway
Priest Drive from Washington Street to north city limits
Rio Salado Parkway from Mill Avenue to Rural Road
River Parkway from Elliot Road to Warner Road
Roosevelt Street from Broadway Road to Southern Avenue
Ruby Drive/Emerald Drive from Priest Drive to Warner Road
Rural (Scottsdale) Road from Loop 202 to Alameda Drive
Rural Road from 200 feet north of Knox Road to south city limits
Southern Avenue from 150 feet east of Terrace Road to 350 feet east of Dorsey Lane
Tenth Place from Fifty-Second Street to Priest Drive
University Drive from Farmer Avenue to Rural Road
Washington Street from Priest Drive to Mill Avenue
Weber Drive from College Avenue to Scottsdale Road

(3) *The prima facie speed limit on the following streets, parts of streets or intersections is forty (40) miles per hour at all times except as otherwise posted:*

Broadway Road from Priest Drive to Farmer Avenue
Broadway Road from 200 feet east of Mill Avenue to Terrace Road
Curry Road from Mill Avenue to McClintock Drive
Elliot Road from west city limits to Priest Drive
Grove Parkway from Priest Drive to Kyrene Road
Guadalupe Road from west city limits to 150 feet east of McKemy Street
Kyrene Road from Southern Avenue to Baseline Road
McClintock Drive from University Drive to Alameda Drive
McClintock Drive from Southern Avenue to Baseline Road
McKellips Road from College Avenue to Scottsdale Road

Mill Avenue from 200 feet south of Broadway Road to Baseline Road
Priest Drive from Grove Parkway to Elliot Road
Priest Drive from 0.25 miles north of Baseline Road to 0.19 miles south of Baseline Road
Priest Drive from Washington Street to Alameda Drive
Rio Salado Parkway from Fifty-Second Street to 0.125 miles east of Hardy Drive
Rio Salado Parkway from Rural Road to Price Road
Rural (Scottsdale) Road from north city limits to Loop 202
Rural Road from Alameda Drive to Baseline Road
Southern Avenue from Union Pacific Railroad Tracks to 150 feet east of Terrace Road
Southern Avenue from 350 feet east of Dorsey Lane to east city limits
University Drive from west city limits to Farmer Avenue
University Drive from Rural Road to east city limits
Washington Street from west city limits to Priest Drive
Warner Road from I-10 to Priest Drive

(4) *The prima facie speed limit on the following streets, parts of streets or intersections is forty-five (45) miles per hour at all times except as otherwise posted:*

Baseline Road from west city limits to east city limits
Broadway Road from west city limits to Priest Drive
Broadway Road from Terrace Road to east city limits
Elliot Road from Priest Drive to east city limits
Forty-Eighth Street from Broadway Road to Southern Avenue
Guadalupe Road from Kyrene Road to 200 feet west of Terrace Road
Guadalupe Road from 200 feet east of Lakeshore Drive to east city limits
Kyrene Road from Baseline Road to south city limits
McClintock Drive from north city limits to University Drive
McClintock Drive from Baseline Road to south city limits
Mill Avenue from north city limits to 0.17 miles south of Curry Road
Priest Drive from Alameda Drive to 0.25 miles north of Baseline Road
Priest Drive from Elliot Road to Ray Road
Rural Road from Baseline Road to 200 feet north of Knox Road
Southern Avenue from west city limits to Union Pacific Railroad Tracks
Warner Road from Priest Drive to east city limits

(Ord. No. 87.30, § 1, 8-13-87; Ord. No. 87.45, § 1, 9-10-87; Ord. No. 89.11, § 1, 4-13-89; Ord. No. 89.51, § 1, 9-28-89; Ord. No. 95.34, 10-12-95; Ord. No. 98.17, 3-26-98; Ord. No. 2001.29, 9-20-01; Ord. No. 2002.17, 5-2-02; Ord. No. 2002.18, 5-2-02; Ord. No. 2003.14, 6-19-03; Ord. No. 2004.47, 5-5-05; Ord. No. 2007.30, 11-8-07)

Secs. 19-64—19-70. Reserved.

ARTICLE VI. SPECIAL STOPS REQUIRED

Sec. 19-71. Stop signs at through streets.

The city traffic engineer shall place and maintain a stop sign on each and every street intersecting through streets described and designated in the schedule maintained current by him, except that at the intersection of two (2) through streets the type of traffic control shall be determined by the city traffic engineer from a traffic engineer investigation.
(Ord. No. 86.45, 7-10-86)

Sec. 19-72. Other intersections where stop or yield required.

The city traffic engineer shall determine and designate intersections where a particular hazard exists upon other than through streets and shall determine whether vehicles shall stop at one or more entrances to any such stop intersection and shall erect a stop sign at every such place where a stop is required. He shall determine and designate intersections where a particular hazard exists and determine whether vehicles on one of the intersecting streets shall yield the right-of-way to vehicles on the other street and shall erect a "yield" sign at every place where such a sign is needed. The city traffic engineer shall erect and maintain control devices for the regulation of pedestrian movements across streets and highways.
(Ord. No. 86.45, 7-10-86)

Secs. 19-73—19-80. Reserved.

ARTICLE VII. METHODS OF PARKING

Sec. 19-81. Standing or parking close to curb.

No person shall stand or park a vehicle in a roadway other than parallel with the edge of roadway headed in the direction of lawful traffic movement and with the right-hand wheels within eighteen (18) inches of the curb or edge of the roadway, except upon a one-way roadway or where angle or diagonal parking is required. In the case of angle or diagonal parking, no person shall stand or park a vehicle other than with the front of such vehicle directed toward the front of curb of such angle or diagonal parking space.
(Ord. No. 86.45, 7-10-86)

Sec. 19-82. Signs or markings indicating angle parking.

The traffic engineer, with council approval, shall determine upon what streets angle parking shall be permitted and shall mark or sign such streets.
(Ord. No. 86.45, 7-10-86)

Secs. 19-83—19-90. Reserved.

ARTICLE VIII. PARKING PROHIBITED IN SPECIFIED PLACES

Sec. 19-91. Stopping, standing or parking prohibited; no signs required.

No person shall stop, stand or park a vehicle, except when necessary to avoid conflict with other traffic or in compliance with law or the directions of a police officer or traffic-control device, in any of the following places:

(1) On a sidewalk or parkway;

(2) In front of a public or private driveway or within three (3) feet thereof;

(3) Within an intersection;

(4) Within fifteen (15) feet of a fire hydrant;

(5) On a crosswalk or within twenty (20) feet thereof;

(6) Within thirty (30) feet upon the approach to any flashing beacon, stop sign, yield right-of-way sign or traffic-control signal located at the side of a roadway;

(7) Between a safety zone and the adjacent curb or within thirty (30) feet points on the curb immediately opposite the ends of a safety zone, unless the traffic engineer has indicated a different length by signs or markings;

(8) Within fifty (50) feet of the nearest rail or a railroad crossing or within eight (8) feet six (6) inches of the center of any railroad track, except while a motor vehicle with motive power attached is loading or unloading cars;

(9) Within twenty (20) feet of the driveway entrance to any fire station and, on the side of a street opposite the entrance to any fire station, within seventy-five (75) feet of such entrance when properly sign posted;

(10) Along or opposite any street excavation or obstruction when stopping, standing or parking would obstruct traffic;

(11) On the roadway side of any vehicle stopped or parked at the edge or curb of a street;

(12) Upon any bridge, viaduct, overpass, underpass or any other type of grade separation, and upon the approach to same;

(13) In front of or within ten (10) feet of a mailbox;

(14) In front of any place of business assembly during the period of public assemblage therein or of a principal exit or entrance to a school, hotel, theater, hospital or public building;

(15) To obstruct or impede traffic in any manner; or

(16) On unstabilized surfaces.
(Ord. No. 86.45, 7-10-86; Ord. No. 2010.27, 7-1-10)

Cross reference—Stopping for loading and unloading, § 19-121 et seq.

Sec. 19-92. Parking within or upon designated fire lanes.

No person shall stop, stand or park any vehicle within or upon a designated fire lane, whether on public or private property; provided, however, that appropriate signs or other markings, as shall be approved or designated by the fire medical rescue chief, shall be posted, erected, marked and maintained in order for this regulation to be effective.
(Ord. No. 86.45, 7-10-86; Ord. No. O2014.14, 3-20-14)

Sec. 19-93. Restricted parking areas reserved for the physically disabled; penalty.

(a) No person shall stop, stand or park a vehicle, or direct a vehicle to be parked, in a restricted parking area unless the vehicle has displayed thereon the international symbol of access special plates that are currently registered to the vehicle or a valid placard issued pursuant to state law. The provisions of this section shall not prohibit the driver of a vehicle without a placard or the international symbol of access special plates from temporarily stopping in a restricted parking area in accordance with other parking regulations while actually engaged in loading or unloading a physically disabled passenger.

(b) No person shall stop, stand or park a vehicle in such a manner as to block or deny access to an unoccupied restricted parking area, except that this provision shall not prohibit the driver of a vehicle from temporarily stopping in accordance with other parking regulations for the purpose of and while actually engaged in loading or unloading physically disabled passengers.

(c) No person shall stop, stand or park a vehicle, including a vehicle displaying international symbol of access special plates or a placard, in the access aisle of a restricted parking area or any designated accessible route of travel or any designated accessible passenger loading zone.

(d) It is unlawful for a person to stop, stand or park in a restricted parking area any vehicle that displays a placard that is altered, forged or counterfeited.

(e) It is unlawful for any person to block, use or otherwise occupy a restricted parking area in such a manner as to block or deny access to a vehicle displaying thereon the international symbol of access special plates or valid placard issued pursuant to state law.

(f) It is unlawful for an owner of real property or other person responsible for real property, to allow a restricted parking area to be blocked, used or otherwise occupied in such a manner as to block or deny access to a vehicle displaying the international symbol or access special plates or valid placard issued pursuant to state law. It is a defense to a violation of this section if the owner of the subject property was not on premises when the violation occurred and did not have previous knowledge of said violation.

(g) It is unlawful for any person to block egress of any vehicle properly parked in a restricted parking area or for an owner of real property or other person responsible for real property to allow the egress of any vehicle properly parked in a restricted parking area to be blocked.

(h) For the purposes of this section, the following words shall have the meaning given herein:

(1) *Access aisle* means a designated area within a restricted parking area that is marked by either spaced, crosshatched or diagonal stripes of a contrasting color (preferably yellow) or distinctive change in paving material, and that leads to an accessible route of travel.

(2) *Accessible route of travel* means a designated accessible route from public transportation stops, accessible parking, accessible passenger loading zones, public streets and sidewalks to the accessible building entrance they serve or connecting buildings, facilities, elements, and spaces on the same site. The accessible route is marked by either spaced, crosshatched or diagonal stripes of a contrasting color (preferably yellow) or a distinctive change in paving material.

(3) *Parking space* means areas that are clearly identified with the internationally accepted symbol of access, either by a clearly visible permanent sign that is mounted on a stationary post or object, or the international symbol of access painted on the paving surface within the boundaries of a parking space, or both.

(4) *Placard* means a permanently disabled removable windshield placard or a temporarily disabled removable windshield placard as defined in § 28-2409, Arizona Revised Statutes.

(5) *Restricted parking area* means a parking space and, if available, an access aisle set aside and identified for use only by persons with physical disabilities.

(i) This section shall not apply if:

(1) Restricted parking areas are temporarily used for a purpose other than accessible parking expressly authorized through a special event permit issued pursuant to § 5-2 of this code; and

(2) The special event permit specifies that the permit holder shall provide adequate alternative accessible parking for the duration of the special event.

(j) A violation of subsection (a), (b), (c), (d), (e), (f), or (h) of this section shall constitute a civil traffic violation and the violator shall be subject to a civil sanction of not less than two hundred fifty dollars ($250). A violation of subsection (d) of this section shall constitute a civil traffic violation and the violator shall be subject to a civil sanction of not less than three hundred dollars ($300). If a person cited under subsection (a) provides the court with acceptable proof of a placard, and this proof is provided prior to, or at, any scheduled hearing, then the court may reduce the fine to an amount deemed appropriate by the court.
(Ord. No. 86.45, 7-10-86; Ord. No. 2000.09, 2-10-00; Ord. No. 2009.31, 9-10-09; Ord. No. 2012.03, 1-19-12)

State law reference—A.R.S. § 28-2409, as it may be amended or renumbered.

Sec. 19-93.1. Accessible curb access ramps; sanctions.

(a) It is unlawful to stop, stand or park a vehicle in such a manner as to block or deny access to any accessible curb access ramp, except that this provision shall not prohibit the driver of a vehicle from temporarily stopping in accordance with other parking regulations for the purpose of and while actually engaged in loading or unloading physically disabled passengers.

(b) It is unlawful for any person to use any means to block or deny access to any accessible curb ramp except as allowed in § 19-93.1.

(c) It is unlawful for any owner of real property or any other person responsible for real property to allow an accessible curb ramp on real property under said control to be blocked by any means except as allowed in § 19-93.1. It is a defense to a violation of this section if the owner of the subject property was not on premises when the violation occurred and did not have previous knowledge of said violation.

(d) A violation of this section shall constitute a civil traffic violation and the violator shall be subject to a civil sanction of not less than two hundred fifty dollars ($250).
(Ord. No. 2009.31, 9-10-09; Ord. No. 2012.03, 1-19-12)

Sec. 19-94. Parking in alleys.

No person shall stand or park a vehicle in an alley at any time except for the loading of materials, and not then unless such loading or unloading can be accomplished without blocking the alley to the free movement of traffic or interfering with or obstructing the operation of a fire escape, and not take over twenty (20) minutes total time. Vehicles displaying the international symbol of access special plates that are currently registered to the vehicle or a valid placard issued pursuant to state law may stand or park in any alley while loading or unloading persons for a period not to exceed fifteen (15) minutes.
(Ord. No. 86.45, 7-10-86; Ord. No. 2009.31, 9-10-09)

Cross reference—Stopping for loading and unloading, § 19-121 et seq.

Sec. 19-95. Parking for certain purposes prohibited.

No person shall park a vehicle upon any rights-of-way for the principal purpose of:

(1) Displaying such vehicle for sale or advertising; or

(2) Washing, greasing or repairing such vehicle, except repairs necessitated by an emergency.

(Ord. No. 86.45, 7-10-86)

Sec. 19-96. Parking signs required.

The city traffic engineer shall determine and designate by appropriate signs or markings any parking time limit and any other limits, restrictions or regulations applicable to parking, standing, stopping, driving or riding on any publicly owned property, as defined in § 19-99, or any other property owned or controlled by the city.
(Ord. No. 86.45, 7-10-86; Ord. No. 95.33, 9-21-95)

Sec. 19-97. Stopping, standing or parking near hazardous or congested places.

The city traffic engineer shall determine and designate by proper signs or markings places in which the stopping, standing or parking of vehicles would create a hazardous condition or would delay to traffic.
(Ord. No. 86.45, 7-10-86)

Sec. 19-98. Standing or parking on one-way roadways.

In the event a highway includes two (2) or more separate roadways and traffic is restricted to one direction upon any such roadway, no person shall stand or park a vehicle upon the left-hand side of such one-way roadway unless signs are erected to permit such standing or parking. The traffic engineer is authorized to determine when standing or parking may be permitted upon the left-hand side of any such one-way roadway and to erect signs giving notice thereof.
(Ord. No. 86.45, 7-10-86)

Sec. 19-99. Riding or parking upon publicly owned property.

(a) No person shall drive, ride, stop, stand or park any vehicle upon publicly owned property or any portion thereof in violation of any restriction posted on signs, markings, traffic control signals or gates.

(b) For the purposes of this section, "publicly owned property" shall mean any lands which the city owns either in fee simple or in which it has acquired a beneficial interest by virtue of an agreement for sale or conveyance.
(Ord. No. 86.45, 7-10-86)

Sec. 19-100. Inoperable or unregistered vehicle on right-of-way.

(a) No person shall park any vehicle which is inoperable on any street or public right-of-way. It is an affirmative defense to a violation of this subsection that the vehicle was removed from the street or public right-of-way within twenty-four (24) hours of becoming inoperable.

(b) No person shall park any vehicle which does not display current registration on any street or public right-of-way.

(c) Violation of this section shall constitute a civil traffic violation and the violator shall be subject to a civil sanction of not more than two hundred fifty dollars ($250).
(Ord. No. 93.29, 8-12-93)

Sec. 19-101. Parking in electric vehicle charging spaces

(a) No person shall stand or park a vehicle in an electric vehicle charging space at any time except for the use of charging a vehicle. Such use shall not:

(1) Block or obstruct the free movement of traffic; or

(2) Exceed six (6) hours total usage.

(b) Violation of this section shall constitute a civil traffic violation and the violator shall be subject to a civil sanction of not more than two hundred fifty dollars ($250).
(Ord. No. 2011.46, 10-20-11)

Secs. 19-102.—19-110. Reserved.

ARTICLE IX. RESIDENTIAL PERMIT PARKING

Sec. 19-111. Designation of residential permit parking area.

The city manager may designate, subject to approval by the city council, a residential area or areas consisting of streets or portions of streets on which the parking of motor vehicles may be restricted in whole or in part to motor vehicles bearing a valid parking permit issued pursuant to these provisions to residents of the area so designated.
(Ord. No. 86.45, 7-10-86)

Sec. 19-112. Eligibility of residential areas of designation.

A residential area shall be deemed eligible for designation for residential permit parking, where the traffic engineer finds that parking in the area is significantly impacted by motor vehicles owned by nonresidents.
(Ord. No. 86.45, 7-10-86)

Sec. 19-113. Issuance of permits; signing; exemptions.

Following city council approval of a residential permit parking area, the traffic engineer shall provide for the issuance of permits and cause parking signs to be erected in the area indicating the times and conditions under which parking shall be by permit only. A permit shall be issued upon application and payment of the applicable fee only to the owner or operator of a motor vehicle, who resides on property immediately adjacent to a street within the residential permit parking area. Each permit is the property of the city and shall be assigned to a single motor vehicle. Permits cannot be sold, transferred or reassigned. This chapter exempts service and delivery vehicles while parked for the purpose of providing a service or delivery in the residential parking permit area. Vehicle must be clearly identified with company name or logo.
(Ord. No. 86.45, 7-10-86; Ord. No. 2013.01, 1-10-13)

Sec. 19-114. Fees.

The city manager is authorized to establish, with city council approval, an annual residential parking fee to cover the administrative cost of permits issued pursuant to these provisions.
(Ord. No. 86.45, 7-10-86)

Sec. 19-115. Administrative guidelines.

The traffic engineer is directed to prepare, and the city manager may issue as an administrative directive, such administrative guidelines as they may deem necessary and desirable to implement the provisions of this action.
(Ord. No. 86.45, 7-10-86)

Sec. 19-116. Permit visibility; placement.

Permits shall be displayed in compliance with the visibility and placement requirements established in this chapter. Permits must be clearly visible. The permit shall be permanently placed on the driver's side rear bumper of the vehicle or on the outside of the rear window on the lower driver's side corner. The visitor placard shall be temporarily placed on the driver's side dashboard without obscuring the vehicle identification number (vin).
(Ord. No. 2013.01, 1-10-13)

Secs. 19-117—19-120. Reserved.

ARTICLE X. STOPPING FOR LOADING AND UNLOADING[2]

Sec. 19-121. Traffic engineer to designate curb loading places.

(a) The city traffic engineer shall designate restricted parking zones by use of signs, or painted curbs, or both.

(b) It is hereby declared to be unlawful for any person to paint a curb, sidewalk or any part of any street of the city in any manner whatsoever, except for the purposes designated by the city council, and it shall be unlawful to designate any part of any street of the city as being limited in any manner with respect to parking thereon.
(Ord. No. 86.45, 7-10-86)

Sec. 19-122. Standing in curb loading zone.

No person shall stop, stand or park a vehicle for any purpose or length of time other than for the expeditious unloading and delivery or pickup and loading of materials or passengers in any place marked as a curb loading zone during hours when the provisions applicable to such zones are in effect. In no case shall the stop for loading and unloading of materials exceed thirty (30) minutes. Vehicles displaying the international symbol of access special plates that are currently registered to the vehicle or a valid placard issued pursuant to state law may stand or park in a curb loading zone while loading and unloading persons for a period not to exceed fifteen (15) minutes.
(Ord. No. 86.45, 7-10-86; Ord. No. 2009.31, 9-10-09)

Cross reference—Similar provisions with respect to handicapped persons, § 19-94.

Sec. 19-123. Traffic engineer to designate public carrier stops and stands.

The traffic engineer with council approval is hereby authorized to establish bus stops, bus stands, taxicab stands or other passenger common-carrier motor vehicle stands on public streets in such places as he shall determine to be of greatest benefit and convenience to the public. Such bus stops, bus stands, taxicab stands or other stands so established shall be designated by appropriate signs where deemed by the traffic engineer as necessary.
(Ord. No. 86.45, 7-10-86)

Sec. 19-124. Bus and taxi zones.

The following rules shall govern the stopping, standing, and parking of buses and taxicabs:

(1) The driver of a bus or taxi shall not park upon any street at any place other than at a bus stop or taxi zone, respectively, except that this provision shall not prevent the driver of any such vehicle from temporarily stopping in accordance with other stopping or parking regulations at any place for the purpose of and while actually engaged in loading or unloading passengers;

[2]**Cross references—**Parking prohibited at railroad crossings except when loading or unloading cars; vehicles carrying handicapped passengers while loading and unloading in alleys, § 19-94.

(2) No person shall stop, stand or park a vehicle at any time in a place marked as a no parking zone by sign or red painted curb, except that a driver of a bus may stop to unload and load passengers in such a zone if signs indicate a bus loading zone; or

(3) No person shall stop, stand or park a vehicle other than a taxi in a place indicated by signs as a taxi standing zone.

(Ord. No. 86.45, 7-10-86)

Secs. 19-125—19-130. Reserved.

ARTICLE XI. PARKING ON CERTAIN STREETS

Sec. 19-131. Application of article

The provisions of this article prohibiting the standing or parking of a vehicle shall apply at all times or at those times herein specified or as indicated on official signs, except when it is necessary to stop a vehicle to avoid conflict with other traffic or in compliance with the directions of a police officer or official traffic-control device. The provisions of this article imposing a time limit on parking shall not relieve any person from the duty to observe other and more restrictive provisions prohibiting or limiting the stopping, standing or parking of vehicles in specified places or at specified times.
(Ord. No. 86.45, 7-10-86)

Sec. 19-132. Posted parking prohibitions.

No person shall stop, stand or park a vehicle on any street or part of street, or on any publicly owned property, as defined in § 19-99, or any other property owned or controlled by the city, when prohibited by official signs.
(Ord. No. 86.45, 7-10-86; Ord. No. 95.33, 9-21-95)

Sec. 19-133. Time limits.

No person may park a vehicle upon any roadway for a consecutive period of time longer than that indicated by official signs installed to limit such parking.
(Ord. No. 86.45, 7-10-86)

Sec. 19-134. Parking signs required.

Whenever by any provision of this chapter a parking time limit is imposed on a specific street or parking is otherwise prohibited on a specific street or part of a street, it shall be the duty of the traffic engineer to erect appropriate signs on such street or part of street giving notice thereof. Parking regulations contained in this chapter which are applicable throughout the city shall be effective without any signs being erected or posted to limit or regulate such parking.
(Ord. No. 86.45, 7-10-86; Ord. No. 92.02, 2-13-92; Ord. No. 92.04, 3-12-92)

Sec. 19-135. Parking of vehicles in city parks.

(a) No person shall park or stand a vehicle in a city park except as designated by lines or markings upon the pavement or ground.

(b) No person shall park a vehicle at any place within a public park whereby, by signs duly erected, parking is prohibited.
(Ord. No. 86.45, 7-10-86)

Sec. 19-136. Parking of common-carriers at night prohibited.

No person shall park a truck, tractor, truck tractor, trailer or semitrailer, as defined by § 28-101, Arizona Revised Statutes, with a capacity of one ton or larger or the chassis thereof or any truck with less than one-ton capacity that was designed or is used for commercial purposes on

any street between the hours of 6:00 p.m. and 6:00 a.m., nor shall any person use any street for the purpose of repairing or reconditioning any such truck, trailer or any common-carrier or any part thereof except when such repairs shall be necessitated by an emergency.
(Ord. No. 86.45, 7-10-86; Ord. No. 93.07, 3-18-93)

Sec. 19-137. Continuous parking on public streets; time limit.

(a) No person shall park any vehicle, including a disabled vehicle, upon any public street or right-of-way for a continuous period longer than one hundred twenty (120) consecutive hours.

(b) Each twenty-four (24) hour period during which a vehicle is parked in violation of this section shall constitute a distinct and separate offense.

(c) The police department may cause a vehicle parked in violation of this section to be removed from the public street or right-of-way after notifying the owner or operator thereof by posting a forty-eight-hour notice of removal upon the vehicle. The owner of a vehicle in violation of this section shall pay all costs incurred in removing said vehicle.

(d) Section 19-134 of this article, requiring signs to be posted, shall not apply to this section.
(Ord. No. 86.45, 7-10-86)

Sec. 19-138. Reserved.

Sec. 19-139. Parking recreational vehicles, boats, trailers on streets prohibited between 2:00 a.m. and 6:00 a.m

(a) No person shall park a recreational vehicle in excess of twenty-one (21) feet, a trailer or a boat on any street in the city between the hours of 2:00 a.m. and 6:00 a.m., except for forty-eight (48) hours for the purpose of loading, unloading and cleaning.

(b) For the purpose of this section:

(1) *Recreational vehicle* means any motor vehicle that is designed or customarily used for sleeping.

(2) *Trailer* means any platform or frame with wheels that is designed or customarily used to carry property and for being drawn or towed by a motor vehicle.

(c) The prohibition set forth in paragraph (a) shall not apply if all of the following conditions are met.

(1) A parking permit has been obtained from the police chief or his designee based on proof of the following:

a. Vehicle must be registered at an address located outside the city;

b. Consent from the owner or occupant of the property adjacent to which the recreational vehicle, boat or trailer is to be parked; and

(2) The parking permit shall be valid for a period of seven (7) consecutive days per calendar year per registered vehicle at the location specified in the permit.

(d) No recreational vehicle, boat or trailer parked on any street shall be occupied as a dwelling unit.

(e) The police chief may issue administrative directives and guidelines as may be necessary and desirable to implement the provisions of this section.
(Ord. No. 92.02, 2-13-92; Ord. No. 92.04, 3-12-92)

Sec. 19-140. Reserved.

ARTICLE XII. PARKING METERS

Sec. 19-141. Position of motor-driven cycles.

It shall be unlawful to park any motor-driven cycle in any manner other than wholly within one parking meter space.
(Ord. No. 86.45, 7-10-86; Ord. No. 2007.28, 5-3-07)

Sec. 19-142. Parking without paying designated meter prohibited.

(a) Each person parking a vehicle or motor-driven cycle within a designated parking area or lot which contains a pay and display station or a designated parking meter shall immediately deposit in said display station or parking meter one or more of the legal United States coins indicated upon the meter.

(b) No person shall permit a vehicle to remain in a space with a designated parking meter, or in a space within a designated parking area or lot which contains a pay and display station when said parking meter, or display station displays a red signal or printed message indicating it is unlawful to do so, except during those hours and days indicated upon said parking meter or display station. No person shall permit a vehicle to remain in a space with a designated parking meter in which the designated parking meter displays fail or is otherwise malfunctioning. This subsection shall not apply to a vehicle displaying a state "disabled parking" identifying insignia.

(c) No person shall permit a motor-driven cycle to remain within a space with a designated parking meter, or in a space within a designated parking area or lot which contains a pay and display station when said parking meter, or display station displays a red signal or printed message indicating it is unlawful to do so, except during those hours and days indicated upon said parking meter or display station. All motor-driven cycles so parked within said parking space shall each be unlawfully parked.
(Ord. No. 86.45, 7-10-86; Ord. No. 97.43, 8-21-97; Ord. No. 2008.45, 9-18-08)

Sec. 19-143. Parking overtime at metered parking areas or lots prohibited.

No person shall permit a vehicle or motor-driven cycle to be parked or remain in a parking space with a designated parking meter, or in a space within a designated parking area or lot which contains a pay and display station for a period of time longer than that time limit stated on the printed message for said parking space. This section shall not apply to a vehicle displaying a state "disabled parking" identification insignia.
(Ord. No. 86.45, 7-10-86; Ord. No. 97.43, 8-21-97)

Sec. 19-144. Parking meter rates.

Parking meter rates shall be set by city council resolution and included in Appendix A.
(Ord. No. 2007.41, 6-28-07)

Secs. 19-145—19-150. Reserved.

ARTICLE XII. RIGHTS AND DUTIES OF PEDESTRIANS

Sec. 19-151. Crossing a roadway.

(a) No pedestrian shall cross the roadway within the central business district other than within a marked or unmarked crosswalk.

(b) Every pedestrian crossing a roadway outside of the central business district at any point other than within a marked or unmarked crosswalk shall yield the right-of-way to all vehicles upon the roadway.

(c) No pedestrian shall cross a roadway where signs or traffic control signals prohibit such crossing.
(Ord. No. 86.45, 7-10-86)

Sec. 19-152. Railroad gates.

No pedestrian shall pass through, around, over or under any railroad crossing gate while such gate is lowered or is being raised or lowered.
(Ord. No. 86.45, 7-10-86)

Sec. 19-153. Soliciting employment, business or contributions.

No person shall stand on a street or highway and solicit, or attempt to solicit, employment, business or contributions from the occupant of any vehicle.
(Ord. No. 86.45, 7-10-86)

Sec. 19-154. Crosswalks.

The city traffic engineer shall designate and maintain, by appropriate devices, marks, or lines upon the surface of the roadway, crosswalks at intersections where in his opinion there is particular danger to pedestrians crossing the roadway, and at such other places as he may deem necessary.
(Ord. No. 86.45, 7-10-86)

Secs. 19-155—19-160. Reserved.

ARTICLE XIV. MISCELLANEOUS PROVISIONS

Sec. 19-161. Safety zones.

The city traffic engineer shall establish safety zones of such kind and character and at such places as he may deem necessary for the protection of pedestrians.
(Ord. No. 86.45, 7-10-86)

Sec. 19-162. Traffic lanes.

The city traffic engineer shall mark traffic lanes upon the roadway of any street or highway where a regular alignment of traffic is necessary.
(Ord. No. 86.45, 7-10-86)

Sec. 19-163. Authority to place signs on one-way streets and alleys.

The city traffic engineer is hereby authorized to determine and designate one-way streets and alleys, after council approval, and the traffic engineer shall place and maintain signs giving notice thereof, and no such regulation shall be effective unless such signs are in place. Signs indicating the direction of lawful traffic movements shall be placed at every intersection where movement of traffic in the opposite direction is prohibited.
(Ord. No. 86.45, 7-10-86)

Sec. 19-164. Truck routes.

The city traffic engineer is authorized to determine and designate parts of streets or specific lanes as truck routes, with council approval, and when so designated all such trucks shall use routes to the closest point of the destination.
(Ord. No. 86.45, 7-10-86)

Sec. 19-165. Unattended motor vehicles.

(a) No person driving or in charge of a motor vehicle shall permit it to stand unattended without first stopping the engine, locking the ignition and removing the key, or when standing upon any perceptible grade without effectively setting the brake thereon and turning the front wheels to the curb or side of the highway.

(b) Whenever any police officer shall find a motor vehicle standing unattended with the ignition key in the vehicle, in violation of this section, such police officer is authorized to remove the key from such vehicle and to deliver such key to the police department.
(Ord. No. 86.45, 7-10-86)

Sec. 19-166. Boarding or alighting from vehicles.

No person shall board or alight from any vehicle while same is in motion.
(Ord. No. 86.45, 7-10-86)

Sec. 19-167. Tracking rubbish or loose material.

No person shall drive or move any commercial or construction vehicle or truck within the city when wheels or tires of which carry onto or deposit in any street, alley or other public right-of-way, mud, dirt, sticky substances, litter or foreign matter of any kind.
(Ord. No. 86.45, 7-10-86)

Sec. 19-168. Arterial street system.

(a) All section line roads within and adjacent to the city are hereby designated arterial streets with the following exceptions:

(1) Kyrene Road between Southern Avenue and Baseline Road;

(2) McKellips Road west of Scottsdale Road; and

(3) Gilbert Road.

(b) In addition, the following nonsection line roads are designated arterial streets:

(1) Washington Street;

(2) Van Buren—Mill Avenue;

(3) Apache Boulevard;

(4) Curry Road; and

(5) Rio Salado Parkway.
(Ord. No. 86.45, 7-10-86)

Sec. 19-169. Parking vehicles containing hazardous materials.

(a) The police department shall enforce the provisions of this section.

(b) Vehicles containing hazardous materials, chemicals, waste or substances, as defined by the Titles 40 or 49 Code of Federal Regulations or vehicles required by the Department of Transportation to be placarded, or vehicles marked with DOT placards, shall not be parked unattended upon private property except in areas which have been approved by the Tempe fire medical rescue department pursuant to a permit. Permits shall only be granted in areas that are zoned I-l, I-2 or I-3.

(c) Vehicles containing hazardous materials, chemicals, waste or substances, as defined by the Titles 40 or 49 Code of Federal Regulations shall not be parked or garaged in any buildings other than those specifically approved for such use by the city of Tempe fire medical rescue department.

(d) Vehicles containing hazardous materials, chemicals, waste or substances, as defined by the Titles 40 or 49 Code of Federal Regulations, shall not be left unattended upon any public street, sidewalk, alley or other public right-of-way. This shall not prevent a driver from the necessary absence from the vehicle in connection with the delivery of its load nor shall it prevent stops for meals.

(e) Any vehicle carrying less than one hundred ten (110) gallons of flammable liquid, excluding the fuel in the vehicles fuel tanks, and no other hazardous material shall be exempt from the requirements of this section.

(f) For purposes of this section, a motor vehicle is attended when the person in charge of the vehicle is on the vehicle, awake and not in a sleeper berth, or is within one hundred (100) feet of the vehicle and has it within his unobstructed field of view.

(g) Any violation of this section shall constitute a misdemeanor and shall be punishable as set forth in § 1-7 of this code. When the driver is not the owner of the vehicle but is so operating, driving, moving or has parked same with the express or implied permission of the owner, then the driver and the owner shall be subject to any penalty authorized by this section.

(h) In addition to any penalty provided for in § 1-7 of this code, any vehicle which is parked in violation of this section may be towed and impounded, or the contents of said vehicle may be removed and impounded or destroyed. Reasonable charges may be made for towing, content removal and impounding.
(Ord. No. 89.52, § 19-96, 9-28-89; Ord. No. O2014.14, 3-20-14)

Editor's note—Ordinance No. 89.52, adopted Sept. 28, 1989, amended Ch. 19, Art. VIII, Parking Prohibited in Specified Places, by adding provisions designated as § 19-96. Inasmuch as Art. VIII already contained provisions designated as § 19-96, and in order to provide for better classification, the editor, at his discretion, has redesignated these new provisions as § 19-169.

Sec. 19-170. Reserved.

ARTICLE XV. TRAFFIC BARRICADE PROGRAM

Sec. 19-171. Traffic barricade program established.

A traffic barricade program is hereby established to ensure that temporary traffic control devices are properly planned and placed in the right-of-way.
(Ord. No. 2009.20, 5-7-09)

Sec. 19-172. Authority and administration.

The traffic engineer shall develop a manual, which provides the regulations, procedures and forms for the placement of temporary traffic control devices in the right-of-way.
(Ord. No. 2009.20, 5-7-09)

Sec. 19-173. Traffic barricade permit.

Any person wishing to conduct work within the right-of-way shall request and obtain a traffic barricade permit issued by the traffic engineer or designee prior to the commencement of such work.
(Ord. No. 2009.20, 5-7-09)

Sec. 19-174. Fees.

The traffic engineer is authorized to assess fees, as established by resolution of the city council, to cover the administrative costs of traffic barricade program. Such fees will be listed in the manual and in Appendix A.
(Ord. No. 2009.20, 5-7-09)

Chapter 20

NOISE[1]

Sec. 20-1. Declaration of policy.

It is hereby declared to be the policy of the city to prohibit unnecessary, excessive and annoying noises from all sources subject to its police power. At certain levels noises are detrimental to the health and welfare of the citizenry and in the public interests shall be systematically proscribed.
(Code 1967, § 19A-l)

Sec. 20-2. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

"A" band level means the total sound level of all noise as measured with a sound level meter using A-weighting network. The unit is the dB(A).

Ambient noise means the all-encompassing noise associated with a given environment, being usually a composite of sounds from many sources, near and far. For the purpose of this chapter, ambient noise level is the level obtained when the noise level is averaged over a period of fifteen (15) minutes without inclusion of noise from isolated identifiable sources, at the location and time of day near that at which a comparison is to be made. Averaging may be done by instrumental analysis in accordance with American National Standard S. 13-1971, or may be done manually as follows:

(1) Observe a sound level meter for five (5) seconds and record the best estimate of central tendency of the indicator needle, and the highest and lowest indications.

(2) Repeat the observations as many times as necessary to ensure that observations are made at the beginning and the end of the fifteen (15) minute averaging period and that there are at least as many additional observations as there are decibels between the highest high indication and the lowest low indication.

(3) Calculate the arithmetical average of the observed central tendency indications.

Decibel means a sound pressure that is twenty (20) times the logarithm to the base 10 of the ratio of the pressure of sound to the reference pressure, 2×10^{-5} Newton/meter^2.

Emergency work means work made necessary to restore property to a safe condition following a public calamity or work required to protect the health, safety or welfare of persons or property or work by private or public utilities when restoring utility service.

[1]**Cross reference—**Use of bell, etc., by mobile merchant, § 24-29.

Frequency. "Frequency" of a function periodic in time shall mean the reciprocal of the primitive period. The unit is the hertz and shall be specified.

Impulse noise means a noise of short duration, usually less than one second, with an abrupt onset and rapid decay.

Microbar means a unit of pressure commonly used in acoustics and is equal to one dyne per square centimeter.

Motor vehicles means any self-propelled vehicle operated within the city, including but not limited to licensed or unlicensed vehicles, automobiles, minibikes, go-carts and motorcycles.

Period. "Period" of a periodic quantity shall mean the smallest increment of time for which the function repeats itself.

Periodic quantity means oscillating quantity, the values of which recur for equal increments of time.

Pure tone noise means any noise which is distinctly audible as a single pitch (frequency) or set of pitches as determined by the enforcement officer.

Sound level. "Sound level" (noise level), in decibels (dB) is the sound measured with the A - weighting and slow response by a sound level meter.

Sound level meter means an instrument including a microphone, an amplifier, an output meter, and frequency weighting networks for the measurement of sound levels which satisfies the pertinent requirements in American Standard Specifications for Sound Level Meters S1.4-1971 or the most recent revision thereof.
(Code 1967, § 19A-2; Ord. No. 2000.01, 1-20-00)

Sec. 20-3. Violation established.

Any person violating any of the provisions of this chapter is in violation of the ordinances of the city and is subject to enforcement action pursuant to the provisions of this chapter
(Code 1967, § 19A-11; Ord. No. 2000.01, 1-20-00)

Sec. 20-4. Exemptions.

The following uses and activities shall be exempt from noise level regulations:

(1) Air-conditioning equipment when it is functioning in accord with manufacturer's specifications and is in proper operating condition provided that no unit may cause the noise level measured inside any sleeping or living room inside any dwelling unit to exceed forty-five (45) dB(A) between the hours of 10:00 p.m. and 7:00 a.m., nor fifty-five (55) dB(A) between the hours of 7:00 a.m. and 10:00 p.m.;

(2) Lawn maintenance equipment when it is functioning in accord with manufacturer's specifications and with all mufflers and noise-reducing equipment in use and in proper operating condition;

(3) Nonamplified noises resulting from the activities such as those planned by school, governmental or community groups;

(4) Noises of safety signals, warning devices and emergency pressure relief valves;

(5) Noises resulting from any authorized emergency vehicle when responding to an emergency call or acting in time of emergency;

(6) Noises resulting from emergency work as defined in § 20-2;

(7) All noises coming from the normal operations of railroad trains;

(8) Noises of church chimes; and

(9) Power plant equipment during normal operation provided that no plant equipment may cause the noise level measured inside any sleeping or living room inside any residential dwelling unit to exceed forty-five (45) dB(A) between the hours of 10:00 p.m. and 7:00 a.m., nor fifty-five (55) dB(A) between the hours of 7:00 a.m. and 10:00 p.m.

(Code 1967, § 19A-10; Ord. No. 2000.01, 01-20-00)

Sec. 20-5. Measurement criteria.

For the purpose of enforcement of the provisions of this chapter, noise level shall be measured on the A-weighted scale with a sound level meter satisfying at least the applicable requirement for Type 1 sound-level meters as defined in American National Standard S 1.4-1971 or the most recent revisions thereof. The meter shall be set for slow response speed, except that for impulse noises or rapidly varying sound levels, fast response speed may be used. Prior to measurement, the meter shall be verified, and adjusted to ± 0.3 decibel by means of an acoustical calibrator.

(Code 1967, § 19A-3)

Sec. 20-6. Allowable noise levels.

(a) It is unlawful for any person to create any noise which would cause the noise level measured at either the property line or the area of the property affected by the noise emission to exceed the following community noise standards:

Zone	*Time*	*Noise Standard dB(A)*
Residential	10:00 p.m. — 7:00 a.m.	45
	7:00 a.m. — 10:00 p.m.	55
Commercial	10:00 p.m. — 7:00 a.m.	55
	7:00 a.m. — 10:00 p.m.	65
Industrial	10:00 p.m. — 7:00 a.m.	60
	7:00 a.m. — 10:00 p.m.	70

(b) If the measurement location is on a boundary between two (2) zoning districts, the lower noise standard shall apply.

(c) If the ambient noise level in a residential zoned location is measured and found to be forty (40) dB(A) or less between the hours of 10:00 p.m. and 7:00 a.m., then the actual ambient noise level will be community noise standard.

(d) If the ambient noise level in any zoning district is measured and found at any time to be in excess of the community noise standards described in subsection (a) of this section, then the actual ambient noise level will be the community noise standard.

(e) A noise level which exceeds the community noise standard by five (5) dB(A) or more, when measured at the affected area, the nearest property line, or, in the case of multiple-family residential buildings, when measured anywhere in one dwelling unit with respect to a noise emanating from another dwelling unit or from common space in the same building, shall be deemed a prima facie violation of this chapter.
(Code 1967, § 19A-4, Ord. No. 2000.01, 1-20-00)

Sec. 20-7. Special noise sources.

(a) Residential zones.

(1) It shall be unlawful for any person, other than law enforcement personnel or government agencies acting within the scope of their employment, to install, use or operate within any residential zone of the city, a loudspeaker or sound-amplifying device or equipment in a fixed or movable position, on public property including any public right-of-way, without first obtaining a temporary permit from the special events task force.

(2) The special events task force shall consider applications for permits for the use of a loudspeaker or sound-amplifying device as follows:

a. Each applicant for a permit to use or operate a loudspeaker or sound-amplifying device or equipment shall submit a complete special events permit application to the city special events office at least ten (10) days prior to the date upon which such loudspeaker or sound-amplifying device or equipment is to be used or operated. Such application shall state the specific location, date and hours for the proposed use, and the volume of sound proposed to be used measured by decibels.

b. The issuance of a permit shall not be denied to any applicant who complies with the provisions of this section, except for the reasons specified in this article or for failure to remit payment of fees.

(3) The special events task force shall not issue a permit for a loudspeaker or sound-amplifying device or equipment as follows:

a. In any location within fifty (50) feet of a school, courthouse, place of worship, hospital or similar institution;

b. In any location where the special events task force determines that the conditions of vehicular, pedestrian travel or both, would constitute a threat to health, safety or welfare; or, would interfere with pedestrian or motor vehicle travel;

c. In any location in which overcrowding, street repair or other physical conditions exist that would deprive the public of safe, comfortable, convenient or peaceful enjoyment of any public property;

d. In any vehicle while in transit; or

e. Between the hours of 10:00 p.m. and 7:00 a.m.

(4) The following activities shall be exempted from the provisions of this section:

a. Warning devices for the protection of public safety, as used for that purpose;

b. Activities conducted on public or private school grounds;

c. Public health and safety activities conducted by public utilities, transportation, flood control, construction or maintenance operations that are serving the public interest, as otherwise authorized by the city;

d. Any mechanical device, apparatus or equipment used for or in relation to emergency machinery or vehicle work that is otherwise authorized by the city;

e. Testing of emergency signaling devices or systems, conducted during the hours of 8:00 a.m. and 8:00 p.m.;

f. Any activity to the extent that such activity is preempted and regulated by state or federal law; and,

g. Any outdoor public gathering or celebration involving the use of city owned properties that involve but are not limited to any of the following: entertainment; dancing; music; dramatic productions; athletic tournaments; amusements, festivals or carnivals; sale of merchandise, food or alcohol, including sidewalk sales; parades, walks, bicycle rides or runs; any temporary extension of premises of an existing use; or, any other activity requiring a special events permit as defined in § 5-2 of this code.

(b) Non-residential zones. It shall be unlawful for any person to create any noise on any street, sidewalk or public place adjacent to any school, institution of learning or church while the same is in use or adjacent to any hospital, which noise unreasonably interferes with the workings of such institution or which disturbs or unduly annoys patients in the hospital; provided that conspicuous signs are displayed in such streets, sidewalk or public place indicating the presence of a school, church or hospital; or that is detrimental to the health, safety and welfare of the public in a manner including but not limited to, a use or operation that diverts the attention of pedestrians or vehicle operators in public streets, parks and places.
(Code 1967, § 19A-5; Ord. No. 2000.01, 1-20-00; Ord. No. 2013.37, 7-30-13)

Sec. 20-8. Construction of buildings and projects.

(a) *General provisions*. It shall be unlawful for any person to operate equipment or perform any outside construction or repair work on buildings, structures or projects, or to operate any pile driver, power shovel, pneumatic hammer, derrick, power hoist or any other construction-type device, except within the time periods specified herein, or if the noise level created thereby is in excess of the applicable community noise standard by five (5) dB(A) at either the nearest property line or the affected area of the property unless written authorization has been obtained before hand from the city manager or his duly authorized representative.

(b) *Start/Stop Times*:

(1) *Concrete*. From April 15 to October 15 inclusive, concrete may be poured, and concrete mixing trucks may be idled, each day between the hours of 5:00 a.m. and 7:00 p.m. or at such other times pursuant to written authorization. From October 16 to April 14 inclusive, concrete may be poured, and concrete mixing trucks may be idled, each day between the hours of 6:00 a.m. to 7:00 p.m. or at such times pursuant to written authorization.

(2) *All other construction/residential zones in or within five hundred (500) feet*. From April 15 to October 15 inclusive, all other construction or repair work shall not begin prior to 6:00 a.m. and must stop by 7:00 p.m. each day in or within five hundred (500) feet of a residential zone or at such other times pursuant to written authorization. From October 16 to April 14 inclusive, all other construction or repair work shall not begin prior to 7:00 a.m. and must stop by 7:00 p.m. each day in or within five hundred (500) feet of a residential zone or at such other times pursuant to written authorization.

(3) *Commercial and industrial zones*. Construction and repair work in commercial and industrial zones not within five hundred (500) feet of a residential zone shall not begin prior to 5:00 a.m. and must stop by 7:00 p.m. or it may be conducted at such other times pursuant to written authorization.

(c) *Weekends and holidays excluded*. Notwithstanding the foregoing, construction or repair work shall not begin prior to 7:00 a.m. and must stop by 7:00 p.m. and concrete pouring should not begin prior to 6:00 a.m. and must stop by 7:00 p.m. on any Saturday, Sunday or holiday, unless such other times are allowed by written authorization.

(d) *Written authorization*. Construction and repair work may be conducted at different times and at higher noise levels than otherwise permitted herein if written authorization is obtained before hand from the city manager or his authorized representative. In granting such authorization, the city manager or his authorized representative shall consider if construction noise in the vicinity of the proposed work site would be less objectionable at night than during the daytime because of different population levels or different neighboring activities; if obstruction and interference with traffic, particularly on streets of major importance, would be less objectionable at night than during the daytime; if the kind of work to be performed emits noises at such a low level as to not cause significant disturbance in the vicinity of the work site; if the neighborhood of the proposed work site is primarily residential in character wherein sleep could be disturbed; if great economic hardship would occur if the work was spread over a longer

time; if the work will abate or prevent hazard to life or property; if the proposed early morning or night work is in the general public interest, and he shall prescribe such conditions, working times, types of construction equipment to be used and permissible noise emissions as he deems to be required in the public interest. No written authorization shall be required to perform emergency work as defined in § 20-2.

(e) *Revocation of written authorization; appeal*. The city manager or his authorized representative may revoke any written authorization granted hereunder upon complaints based upon substantial evidence that the construction activity causes significant disturbance in the vicinity of the work site. Any person aggrieved by the granting of written authorization or the refusal to grant written authorization by the city manager or his authorized representative may appeal the decision to the city council who shall hear such appeal at the next regularly scheduled meeting of the city council.

(f) *Stop orders.* Whenever any work on a construction project is in violation of the provisions of this section, the community development director or his authorized representative, or, in the case of public works projects, the public works director or his authorized representative, may order the construction project stopped by notice in writing served on any persons responsible for the project, and any such persons shall forthwith stop work on the project until authorized by the community development director or the public works director to proceed with such work.
(Code 1967, § 19A-6; Ord. No. 696.3, 6-20-85; Ord. No. 86.46, § 1, 6-19-86; Ord. No. 2000.01, 1-20-00; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Sec. 20-9. Vehicles.

(a) It shall be unlawful for any person within any residential area of the city to repair, rebuild or test any motor vehicle (between the hours of 10:00 p.m. of one day and 7:00 a.m. of the next day) in such a manner that a reasonable person of normal sensitiveness residing in the area is caused discomfort or annoyance.

(b) No person shall operate either a motor vehicle or combination of vehicles at any time or under any condition of grade, load, acceleration or deceleration in such a manner as to exceed the following noise limit of the category of motor vehicle based on a distance of fifty (50) feet from the center of the lane or travel within the speed limits specified in this section:

	Speed limit of 35 mph or less	*Speed limit of more than 35 mph*
(1) Any motor vehicle with a manufacturer's gross vehicle weight rating of 6,000 pounds or more, any combination of vehicles towed by such motor vehicle, and any motor-cycle other than a motor-driven cycle.	88 dB(A)	92-dB(A)

	Speed limit of 35 mph or less	*Speed limit of more than 35 mph*
(2) Any other motor vehicle and any combination of vehicles towed by such motor vehicles.	82 dB(A)	86 dB(A)

(Code 1967, § 19A-7)

Sec. 20-10. Aircraft.

(a) It will be unlawful for any person to operate or cause to be operated any type of aircraft which produces a noise level exceeding 86 dB(A) within the city.

(b) Any aircraft operated in conformity with, or pursuant to, federal law, federal air regulations and air traffic control instruction used pursuant to and within the duly adopted federal air regulations shall be exempt from the provisions of subsection (a) of this section as well as the other regulations of this chapter. Any aircraft operating under technical difficulties, in any kind of distress, under emergency orders of air traffic control or being operated pursuant to and subsequent to the declaration of an emergency under federal air regulations shall also be exempt from the provisions of subsection (a) of this section as well as the other regulations of this chapter.
(Code 1967, § 19A-8)

Sec. 20-11. Unnecessary noise.

(a) Notwithstanding any other provision of this chapter, and in addition thereto, it shall be unlawful for any person without justification to make or continue, or cause or permit to be made or continued, any unnecessary, excessive or offensive noise which disturbs the peace or quiet of any neighborhood or which causes discomfort or annoyance to any reasonable person of normal sensitiveness residing in the area.

(b) The factors which will be considered in determining whether a violation of the provisions of this section exists will include, but not be limited to, the following:

(1) The volume of noise;

(2) The intensity of the noise;

(3) Whether the nature of the noise is usual or unusual;

(4) Whether the origin of the noise is natural or unnatural;

(5) The volume and intensity of the background noise, if any;

(6) The proximity of the noise to residential sleeping facilities;

(7) The nature and zoning of the area within which the noise emanates;

(8) The density of the inhabitation of the area within which the noise emanates;

(9) The time of the day or night the noise occurs;

(10) The duration of the noise;

(11) Whether the noise is recurrent, intermittent or constant;

(12) Whether the noise is produced by a commercial or noncommercial activity;

(13) Whether it is a pure tone noise; or

(14) Whether it is an impulse noise.

(Code 1967, § 19A-9; Ord. No. 2000.01, 1-20-99)

Sec. 20-12. Commencement of action, citation, contents.

An action under this chapter shall be commenced by delivering a citation to the occupant of the property where the violation has occurred, the owner of record, or any person responsible for the violation.

(Ord. No. 2000.01, 1-20-00; Ord. No. 2000.13, 3-30-00; Ord. No. 2001.17, 7-26-01; Ord. No. 2002.35, 8-8-02)

Sec. 20-13. Repealed

(Ord. No. 2000.01, 1-20-00; Ord. No. 2000.13, 3-30-00; Ord. No. 2002.35, 8-8-02)

Sec. 20-14. Repealed.

(Ord. No. 2000.01, 1-20-00; Ord. No. 2000.13, 3-30-00; Ord. No. 2001.17, 7-26-01; Ord. No. 2002.35, 8-8-02)

Sec. 20-15. Civil fines and penalties imposed.

(a) The civil fine/penalty for violating any provision of this chapter shall be not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000).

(b) In addition to the amount of the fine imposed under subsection (a) above, there is imposed a default penalty in the amount of fifty dollars ($50) should the defendant fail to appear and answer for a violation of this chapter within the time period stated on the citation or fails to appear at the time and place set by the court for a matter arising under this chapter.

(c) The court may enforce collection of delinquent fines, fees, reinspection fees, and penalties as may be provided by law. In addition, any judgment for a civil sanction imposed pursuant to this code shall constitute a lien against the real property of the owner of the property where the violation occurred. The lien may be perfected by recording a copy of the judgment under seal of the City of Tempe with the Maricopa County Recorder. Any judgment for civil sanction pursuant to this code may be collected as any other civil judgment.

(Ord. No. 2000.01, 1-20-00)

Sec. 20-16. Repealed.

(Ord. No. 2000.01, 1-20-00; Ord. No. 2000.13, 3-30-00; Ord. No. 2002.35, 8-8-02)

Sec. 20-17. Each day separate violations.

Each day that a violation of this chapter is permitted to continue or occur by the defendant shall constitute a separate offense subject to separate citation pursuant to the provisions of this chapter.
(Ord. No. 2000.01, 1-20-00)

Sec. 20-18. Habitual offender.

A person who commits a violation of this chapter after having previously been found responsible by the court on three (3) separate occasions for committing a civil violation of this chapter within a twenty-four (24) month period, whether by admission, by payment of the fine, by default, or by judgment after hearing, shall be charged with a criminal misdemeanor pursuant to the general penalties provision of § 1-7. The Tempe city prosecutor is authorized to file a criminal misdemeanor complaint in the Tempe Municipal Court against habitual offenders who violate this section. In applying the twenty-four (24) month provision, the dates of the commission of the offense shall be the determining factor, irrespective of the sequence in which the offenses were committed.
(Ord. No. 2000.01, 1-20-00)

Sec. 20-19. Nuisance abatement; additional remedy.

In addition to or in lieu of filing a civil citation or criminal complaint, the operation or maintenance of any device, instrument, vehicle or machinery in violation of any provision of this chapter, which operation or maintenance causes discomfort or annoyance to reasonable persons of normal sensitivity or which endangers the comfort, repose, health or peace of residents in the area, shall be deemed and is declared to be a nuisance and shall be subject to abatement as set forth in chapter 21 of this code.
(Ord. No. 2000.01, 1-20-00)

Chapter 21

NUISANCES AND PROPERTY ENHANCEMENT

ARTICLE I. NUISANCES[1]

Sec. 21-1. Definitions.

For the purposes of this article, the following words, terms and phrases shall have the meaning respectively ascribed to them as follows, unless the context clearly indicates otherwise:

Animal means any types of animals, both domesticated and wild, male, female or neutered, singular and plural.

Architectural pool means a constructed or excavated exterior area designed to hold water on a continuous basis other than a swimming pool or a spa.

Deteriorated or *deterioration* means a lowering in quality of the condition or appearance of a building, structure or premises, characterized by holes, breaks, rot, crumbling, cracking, peeling, rusting or any other evidence of physical decay, neglect, damage or lack of maintenance.

Dumping ground means any area that is used for the storing, leaving, or abandoning of refuse, garbage, waste, earth, rock or debris, including construction, agricultural, landscape, residential, commercial and industrial solid waste.

Garage sale means and includes yard sales, carport sales or similar types of sales on the seller's own premises, involving the sale of used or second hand tangible personal property customarily found in and about the residence, and not including property acquired for resale and not for personal use.

Habitual offender means any person that on at least one prior occasion within a twelve (12) month period of adjudication has had:

(1) At least one conviction, either civil or criminal, or a default judgment entered, of a violation of this chapter; or

(2) Has had abatement action approved against any property the habitual offender owns.

[1]**Editor's note**—Ch. 21, Art. I, Nuisances, was rewritten and renumbered in its entirety (Ord. No. 99.35). Prior ordinances were Ord. No. 87.16, 4-20-87; Ord. No. 87.31, 7-23-87; Ord. No. 88.22, 4-14-88; Ord. No. 89.65, 1-11-90; Ord. No. 93.14, 5-13-93; Ord. No. 93.42, 1-13-94. Ch. 22, Art. III, Neighborhood enhancement and cleanup, §§ 22-60 through 22-70 were incorporated into Art. I.

Improved area means an area having a surface of asphalt, concrete, crushed rock, gravel, masonry or wood, maintained free of all vegetation and contained within a permanent curb or border, constructed of asphalt, concrete, masonry, metal, wood or other approved permanent material secured to or embedded in the ground, delineating the improved area from the remainder of the yard area.

Inoperable vehicle means a vehicle that is physically incapable of its intended operation, or unable to be safely operated at that time, including but not limited to vehicles on blocks or similar devices, with a deflated tire or tires, or from which the engine, wheels or tires have been removed.

Junkyard means a place used for the storage, keeping or abandonment of junk, stripped, substantially damaged, discarded or dismantled vehicles or machinery, or parts thereof, scrap metals, rags, scrap materials or articles that are worn out or fit to be discarded; including places used for the wrecking, disassembling, repair or rebuilding of vehicles or machinery of any kind. The term junk as used in this definition does not include ongoing restoration projects.

Landscaping means the combination of elements such as trees, shrubs, ground covers, vines and other organic and inorganic material for the express purpose of creating an attractive and pleasing environment.

Off-road vehicle means a recreational vehicle designed for off-road use and not required to be licensed, including without limitation all-terrain vehicles, motocross cycles, sand rails and dune buggies.

Ongoing restoration project means a project involving a single vehicle or machinery that is kept in a clean and neat condition during the term of active repair and rebuilding.

Slum-like means the unsightly condition of a building, structure or premises characterized by deterioration or other similar conditions regardless of the condition of other properties in the neighborhood.

Street or *highway* means the entire width between the boundary lines of every way publicly owned or maintained when any part thereof is open to the use of the public for the purpose of vehicular travel.

Vehicle means a machine propelled by power other than human power designed to travel along the ground, water or air to transport persons, property or machinery, and shall include, without limitation, automobile, truck, trailer, motorcycle, tractor, boat or aircraft.
(Ord. No. 99.35, 9-30-99; Ord. No. 2001.17, 7-26-01; Ord. No. 2002.06, 5-30-02; Ord. No. 2007.80, 12-13-07)

Sec. 21-2. Purpose and scope.

The purpose of this chapter is to promote the health, safety and welfare of Tempe and its residents, and to protect neighborhoods against physical, visual and economic deterioration. To that end, it is a violation of this article to erect, maintain, use, place, deposit, cause, allow, leave or permit to remain on any property any conditions that:

(1) Contribute to or cause injury or endangerment to the health, safety or welfare of others;

(2) Are contrary to community standards of decency;

(3) Are offensive to the senses of any reasonable person of normal sensitiveness;

(4) Unlawfully interfere with, obstruct or tend to obstruct or render dangerous the free passage or use, in the customary manner, of any stream, public park, parkway, square, sidewalk, street or highway in the city;

(5) Obstruct the free use of property so as to essentially interfere with the comfortable enjoyment of life and property by the public; or

(6) Damage or contribute to the deterioration of property or improvements in the community.

(Ord. No. 99.35, 9-30-99; Ord. No. 2002.06, 5-30-02)

Sec. 21-3. Enumerated violations.

(a) It shall be unlawful and a violation of this code for any person to commit a nuisance or willfully omit to perform any legal duty relating to the removal of a nuisance.

(b) A nuisance includes any one or more of the following conditions:

(1) Filthy, littered, debris or trash-covered exterior areas, including exterior areas under any roof not enclosed by the walls, doors or windows of any building; including, but not limited to, areas that contain items such as cans, bottles, wood, metal, plastic, rags, boxes, paper, tires, auto parts; unused, inoperable, worn out or discarded appliances or other household items; lumber, scrap iron, tin and other metal not neatly piled, or anything whatsoever that is or may become a hazard to public health and safety, or that may harbor insect, rodent or vermin infestation. This subsection shall not be deemed to include items kept in covered bins or metal receptacles approved by the county health officer or this code or any other ordinance of the city;

(2) Exterior areas used or maintained as junkyards or dumping grounds, except:

a. Any automobile wrecking yard or other junkyard where the same are permitted by the city zoning regulations; or

b. The disassembling, repair, rebuilding, storage or keeping of vehicles, machinery or any of the parts thereof on any farm or ranch where such disassembling, repair, rebuilding, storage or keeping are customary and incidental to such farming or ranching activities;

(3) Any inoperable or unregistered vehicle, or parts thereof, outside of or under a roof area not enclosed by walls, doors or windows of any building on any lot, except the safe and neat keeping of:

a. Substantially complete inoperable or unregistered vehicles with inflated tires under the roof area of any building;

b. A vehicle undergoing repair, titled to the owner or resident of the property, provided that the repair is complete within fourteen (14) days after the repair was begun, provided that not more than three (3) such fourteen (14) day repairs will be permitted in any twelve (12) month period;

c. Not more than two (2) ongoing restoration projects or inoperable or unregistered vehicles in a backyard area, screened by a substantially opaque fence at a minimum height of five (5) feet or the height of the vehicles, whichever is more, provided that any fence constructed or modified pursuant to this subsection must meet any and all other requirements of the city code;

d. Lawful commercial activities involving vehicles as allowed by the Zoning and Development Code; or

e. Operable, off-road vehicles, under the roof area of any building, or in a backyard area, screened by a substantially opaque fence at a minimum height of five (5) feet or the height of the vehicles, whichever is more, provided that any fence constructed or modified pursuant to this subsection must meet any and all other requirements of the city code;

(4) To leave or permit to remain outside of any single-family or multifamily dwelling or accessory building any camper, vehicle, or part thereof in any portion of the front or side area of the building visible from the street that is not on an improved area designed or intended for such use. An improved area shall:

a. Be contiguous to, parallel with, and share an access point with, the required driveway;

b. Have a consistent length and width, but not necessarily the same dimensions of the parking area or required driveway;

c. Be no greater than thirty-five percent (35%) of the front and side areas visible from the street;

d. Be a minimum of three (3) inches in depth if gravel, crushed rock or other aggregate. If using materials other than asphalt or concrete, an improved surface containing material such as gravel or crushed rock must be contained within a permanent border, imbedded in the ground, delineating the improved area from the remainder of the yard; and

e. Be maintained free of all vegetation, including, but not limited to grasses, trees and bushes.

Zoning and Development Code reference—Section 4-602(B)(7), recreational vehicle parking.

(5) The storing or leaving of any machinery or equipment designed for or used by contractors or builders for commercial purposes, except where permitted by the city zoning regulations;

(6) Excessive animal waste that is not securely protected from insects and the elements, or that is kept or handled in violation of this code or any other ordinance of the city or the county; provided, that nothing in this subsection shall be deemed to prohibit the use of such animal waste on any farm or ranch in such a manner and for such purposes as are compatible with customary methods of good husbandry or cultivation;

(7) Any object, building, tree, bush or vehicle that interferes with, obstructs, tends to obstruct, or renders dangerous the free passage, use or vision in the customary manner of any sidewalk, street or highway in the city;

(8) Any landscaping, visible from public property, that is substantially dead, damaged, or characterized by uncontrolled growth, or presents a deteriorated or slum-like appearance; uncultivated plants, weeds, tall grass, uncultivated shrubs or growth (whether growing or otherwise) higher than twelve (12) inches; or any dead trees, bushes, shrubs or portions thereof, including stumps; or any palm or similar type tree having dead or dry fronds descending downward from the base of the lowest living frond more than eight (8) feet or dry fronds longer than five (5) feet and closer than eight (8) feet to the ground;

(9) Any dangerous, deteriorated, abandoned, partially destroyed or unfinished building, addition, appendage or other structure, or any building in violation of the uniform building code as adopted by the city, and any vacated or abandoned building not securely closed at all times; any wood, metal or other material used for securing a vacated or abandoned building must be compatible with the color of the building;

(10) Any putrid, unsound or unwholesome bones, meat, hides, skins or the whole or any part of any dead animal, butcher's trimmings and offal, or any waste vegetable or animal matter in any quantity, garbage, human excreta, sewage or other offensive substances; provided, that nothing contained in this subsection shall prevent the temporary retention of waste in receptacles in the manner approved by the health officer of the county or this code or any other ordinance of the city;

(11) The erection, continuance or use of any building, room or other place in the city that, by noxious exhalations, including but not limited to smoke, soot, dust, fumes or other gases, offensive odors or other annoyances, is discomforting or offensive or detrimental to the health of individuals or of the public;

(12) Burning or disposal of refuse, sawdust or other material in such a manner as to cause or permit ashes, sawdust, soot or cinders to be cast upon the sidewalk, streets, alleys or highways of the city, or to cause or permit the smoke, ashes, soot or gasses arising from such burning to constitute a potential hazard to public health, safety and welfare; provided, that this subsection shall not apply where the person responsible for the action has properly obtained a fire permit from the city fire medical rescue department or the county health officer;

(13) Any unguarded or abandoned excavation, pit, well or hole that may constitute a threat to public health, safety and welfare; or any well, cellar, pit or other excavation of more than two (2) feet in depth, on any unenclosed lot, without substantial curbing, covering or protection;

(14) To leave or permit to remain exposed outside on any property, or within any unoccupied or abandoned building, dwelling or other structure or in a place accessible to children, any abandoned, unattended or discarded ice box, refrigerator or other container that has an airtight door or lid, snaplock or other locking device that may not be released from the inside, without first removing such door or lid, snaplock or other locking device from such ice box, refrigerator or container;

(15) Any wall or fence that is missing blocks, boards or other material, or is otherwise deteriorated so as to constitute a hazard to persons or property. This includes but is not limited to, leaning or damaged fences, fences missing slats or blocks or any other materials that are otherwise broken or damaged in such amounts as to present a deteriorated or slum-like appearance. All replacement materials shall be uniform, compatible and consistent with the design thereof;

(16) Any swimming pool areas that are not enclosed by a fence of at least five (5) feet in height and equipped with self-closing, self-latching gate(s), or padlocked at all times. Any openings in the fencing shall be of a size to prohibit a spherical object four (4) inches in diameter from passing through or under the fence or gate; or any swimming pool, architectural pool or spa that creates a health hazard, harbors insect infestation or presents a deteriorated appearance;

(17) Making, causing or permitting to be made any vibration or artificial illumination of such intensity as to interfere substantially and unnecessarily with the use and enjoyment of public or private property by the public, or as to constitute a hazard or threat to the public health, safety or welfare of the people of the city;

Zoning and Development Code reference—Part 4, Chapter 8, Lighting

(18) Willfully or negligently permitting or causing the escape or flow of water into the public right-of-way in such quantity as to cause flooding, to impede vehicular or pedestrian traffic, to create a hazardous condition for such traffic, or to cause damage to the public streets or alleys of the city through the failure or neglect to operate or maintain properly any water facility or device,

including, but not limited to, swimming pools, architectural pools, spas, sprinklers, hoses, pipes, ditches, standpipes, berms, valves and gates;

(19) The keeping or harboring of any dog or other animal that by frequent or habitual howling, yelping, barking, crowing or the making of other noises, annoys or disturbs a neighborhood or any number of persons; provided, that an action for a violation of this subsection shall not be initiated, unless a petition is received signed by at least three (3) witnesses in separate households with independent knowledge of the nuisance. The petition requirements may be waived if the circumstances and evidence otherwise support grounds for enforcement; or

(20) To leave or permit to remain on any property, areas infested with insects or rodents including, but not limited to: bees, wasps, hornets, yellow jackets, mice, rats, or roaches, in an amount that may become a hazard to public health or safety.

(c) Nothing in subsections (1) through (5) of this section shall be deemed to apply to safe and neat outdoor accessory storage, use or repair of items customarily associated with the lawful use of such property in the city, screened by a substantially opaque fence at a minimum height of five (5) feet or the height of the storage, use or repair, whichever is more, provided that any fence constructed or modified pursuant to this subsection must meet any and all other requirements of the city code.
(Ord. No. 99.35, 9-30-99; Ord. No. 2002.06, 5-30-02; Ord. No. 2004.42, 1-20-05; Ord. No. 2006.53, 7-20-06; Ord. No. 2007.80, 12-13-07; Ord. No. 2008.21, 6-5-08; Ord. No. O2014.14, 3-20-14)

Sec. 21-4. Other enumerated violations.

(a) It shall be unlawful and a violation of this code for any person to erect, maintain, use, place, deposit, cause, allow, leave or permit to remain any of the following:

(1) In a residential district, any vehicle or trailer that was designed or is used for any commercial purpose, of more than one-ton capacity or in excess of twenty-one (21) feet in length; or two (2) or more commercial vehicles, regardless of size;

(2) For any residential property:

a. Any wood surfaces unprotected from the elements by paint or other protective treatment, except those naturally resistant to decay;

b. Exterior painted surfaces with loose, cracked, scaling, chipping or peeling paint, visible from a public area, in such amounts as to present a deteriorated or slum-like appearance;

c. Broken, rotted, split, curled or missing roofing material in such amounts as to present a deteriorated or slum-like appearance;

d. Replacement materials and paint used to repair or repaint exterior surfaces of a building shall be visually compatible with the remainder of the materials and paint on the exterior of the structure;

e. Glazed areas not in sound condition or maintained free of missing, loose, cracked or broken glass; or

f. Exterior doors, garage doors, door hardware and door frames not maintained in sound condition, or kept free from holes, breaks and cracks; or any exterior door incapable of functioning as intended by its design.

(3) Outside of any building, any required address numbers which are not mounted to the building in a permanent and stationary manner, or are obstructed by trees, shrubs, or anything that would tend to hide or obscure the numbers, or are not visible at all times from public access areas to the dwelling; or

Cross Reference—Number assignment; placement on buildings, § 25-41.

(4) Conducting garage sales from any property in excess of five (5) days in any six (6) month period, or between the hours of 8:00 p.m. and 7:00 a.m., or the sale of property acquired for resale and not for personal use in any residential district at any time.

(b) It shall be a separate citable offense to be a habitual offender of this code.
(Ord. No. 99.35, 9-30-99; Ord. No. 99.44, 12-16-99; Ord. No. 2002.06, 5-30-02; Ord. No. 2007.80, 12-13-07)

Sec. 21-5. Violations not exclusive.

Violations of this article are in addition to any other violation enumerated within this chapter or other code provisions and in no way limits the penalties, actions or abatement procedures that may be taken by the city for any violation of this article that is also a violation of any other ordinance of the city, or statute of the State of Arizona.
(Ord. No. 99.35, 9-30-99; Ord. No. 2002.06, 5-30-02)

Sec. 21-6. Repealed.
(Ord. No. 99.35, 9-30-99; Ord. No. 2000.13, 3-30-00; Ord. No. 2001.17, 7-26-01; Ord. No. 2002.06, 5-30-02)

Sec. 21-7. Repealed.
(Ord. No. 99.35, 9-30-99; Ord. No. 2000.13, 3-30-00; Ord. No. 2002.06, 5-30-02)

Sec. 21-8. Repealed.
(Ord. No. 99.35, 9-30-99; Ord. No. 2000.13, 3-30-00; Ord. No. 2001.17, 7-26-01; Ord. No. 2002.06, 5-30-02)

Sec. 21-9. Repealed.
(Ord. No. 99.35, 9-30-99; Ord. No. 2002.06, 5-30-02)

Sec. 21-10. Repealed.

(Ord. No. 99.35, 9-30-99; Ord. No. 2000.13, 3-30-00; Ord. No. 2002.06, 5-30-02)

Sec. 21-11. Repealed.
(Ord. No. 99.35, 9-30-99; Ord. No. 2002.06, 5-30-02)

Sec. 21-12. Repealed.
(Ord. No. 99.35, 9-30-99; Ord. No. 2002.06, 5-30-02)

Sec. 21-13. Unenumerated violations.

Notwithstanding any other provisions of this article, a person who commits a nuisance or willfully omits to perform any legal duty relating to the removal of a nuisance not enumerated in § 21-3 or § 21-4, but otherwise provided for within the scope of authority to regulate nuisances as granted to the city by state law, shall nonetheless be in violation of this chapter, provided the following conditions are satisfied:

(1) The violation must meet any or all of the standards contained in § 21-2 of this article;

(2) The community development director or designee must submit a report of the violation to the city prosecutor for review. The report shall contain a detailed description of the violation and explain why the violation does not come within § 21-3 or § 21-4; and

(3) The city prosecutor may commence, or cause the community development director or designee to commence, an action under this section in any manner described in article III of this chapter.

(Ord. No. 99.35, 9-30-99; Ord. No. 2001.17, 7-26-01; Ord. No. 2002.06, 5-30-02; Ord. No. 2005.18, 4-7-05; Ord. No. 2009.38, 10-22-09; Ord. No. 2010.02, 2-4-10)

Sec. 21-14. Repealed.
(Ord. No. 99.35, 9-30-99; Ord. No. 2001.17, 7-26-01; Ord. No. 2002.06, 5-30-02)

Sec. 21-15. Repealed.
(Ord. No. 99.35, 9-30-99; Ord. No. 2001.17, 7-26-01; Ord. No. 2002.06, 5-30-02)

Sec. 21-16. Repealed.
(Ord. No. 99.35, 9-30-99; Ord. No. 2001.17, 7-26-01; Ord. No. 2002.06, 5-30-02)

Sec. 21-17. Repealed.
(Ord. No. 99.35, 9-30-99; Ord. No. 2001.17, 7-26-01; Ord. No. 2002.06, 5-30-02)

Secs. 21-18—21-20. Reserved.

ARTICLE II. RENTAL HOUSING CODE[2]

DIVISION 1. GENERALLY

Sec. 21-21. Title.

This article shall be known as the Rental Housing Code, may be cited as such, and will be referred to hereafter as the "Code".
(Ord. No. 2002.06, 5-30-02)

Sec. 21-22. Scope.

This code shall apply to all rental housing units located within the city including mobile homes, single family homes and multifamily units. The intent of this code is to establish base standards for rental housing in Tempe so as to prevent or correct slum and blighted conditions and protect the health, safety and welfare of the community.
(Ord. No. 2002.06, 5-30-02)

Sec. 21-23. Definitions.

For the purposes of this article, the following words, terms and phrases shall have the meaning respectively ascribed to them as follows, unless the context clearly indicates otherwise:

Accessory use areas means those areas and buildings around a rental dwelling which provide space for amenities and facilities, including but not limited to pay phones, picnic areas, recreation areas, laundry rooms, recreation rooms and refuse collection facilities.

Agent means a person residing or located within Maricopa County authorized by the owner of a rental housing unit to make or order repairs or service to the unit and authorized to receive notices on behalf of the owner.

Approved means in conformance with the appropriate codes and approved by the community development director for the City of Tempe or his designee.

Architectural pool means a constructed or excavated exterior area designed to contain a regular supply of water other than a swimming pool or a spa.

Deterioration means a lowering in quality of the condition or appearance of a building, structure or premises characterized by holes, breaks, rot, crumbling, cracking, peeling, rusting or any other evidence of physical decay, neglect, damage or lack of maintenance.

Dwelling means an enclosed occupied or unoccupied space designed as or being used as permanent living facilities, including single family and multifamily dwellings and accessory use areas.

[2]**Editor's note**—Ch. 22, Art. VII, Rental housing code, §§ 22-110 through 22-170 were incorporated into this article. Prior ordinances were Ord. No. 98.01, 1-8-98 and Ord. No. 2001.17, 7-26-01.

Exterior opening means an open or closed window, door or passage between interior and exterior spaces.

Gang boxes means a group of postal service mail boxes clustered together serving a residential area.

Glazed means fitted with glass.

Habitable room means a room or enclosed floor space within a rental housing unit used, intended to be used or designed to be used for living, sleeping, eating or cooking and excludes bathrooms, laundry rooms, halls, closets and storage places.

Impervious means incapable of being penetrated or affected by water or moisture.

Infestation means the presence or apparent presence of insects, rodents, vermin or noxious pest of a kind or in a quantity that endangers health within or around a dwelling or may cause structural damage to the dwelling.

Inoperable vehicle means a vehicle which is physically incapable of operation, stripped, substantially damaged, discarded or unable to be safely operated.

Landscaping means the combination of elements such as trees, shrubs, ground covers, vines and other organic and inorganic material for the express purpose of creating an attractive and pleasing environment.

Makeshift means not in accordance with the requirements of this code, any ordinance of the city or rules or regulations adopted thereunder, accepted practices, prevailing standards, design of a licensed contractor or manufacturers recommendation.

Manager means any person who has charge, care or control of a rental housing unit.

Occupant means any person living in, sleeping in or possessing a rental housing unit.

Owner means a person, persons or legal entity listed as the current titleholder of real property, as recorded in the official records of the Maricopa County Recorder's Office.

Parking area means any area adjacent to a rental housing unit which was designed for or is used for the purpose of parking vehicles.

Rental housing unit means that portion of a dwelling for which payment or other consideration is being made to an owner, agent or manager for the use or occupancy of that portion as an independent living facility, excluding transient occupancy such as hotels and motels.

Slum-like means the unsightly condition of a building, structure or premises characterized by deterioration or other similar conditions regardless of the condition of other properties in the neighborhood.

Sound condition means free from decay or defects and in good working condition if applicable.

Specific lighting means artificial illumination which was designed and installed to provide adequate lighting for a specific area.

Storage means placing or leaving personal property in a location for a period of time exceeding thirty (30) days or for the purpose of preservation, seasonal or future use or disposal.

Vehicle means an automobile, truck, trailer, camper, recreational vehicle, boat or motorcycle.
(Ord. No. 2002.06, 5-30-02; Ord. No. 2005.18, 4-7-05; Ord. No. 2009.38, 10-22-09; Ord. No. 2010.02, 2-4-10)

Sec. 21-24. Authority to inspect.

(a) *Personnel*. The community development director or designee is authorized to make reasonable and necessary inspections of rental housing units and premises to determine compliance with this article.

(b) *Access*. Every owner, agent, manager or tenant of a rental housing unit shall, upon reasonable notice, allow access to any part of such rental housing unit at all reasonable times for the purpose of making such inspections. If the owner, agent, manager or tenant refuses access to make an inspection, the city is authorized to obtain an inspection warrant in accordance with the provisions of chapter 34 of this code.

(c) *Scope*. An inspector may expand the scope of an inspection to include other city code violations noted during the inspection.

(d) *Compliance*. If upon inspection, violations of interior or exterior standards exist, the owner, agent or manager will be required to correct all violations within a reasonable period of time as determined by the inspector. In the event the rental housing unit becomes unoccupied, future occupancy will be prohibited until all violations have been corrected and the unit has been reinspected by the city and deemed to be in compliance.
(Ord. No. 2002.06, 5-30-02; Ord. No. 2005.18, 4-7-05; Ord. No. 2009.38, 10-22-09; Ord. No. 2010.02, 2-4-10)

Sec. 21-25. Owners of rental property, registration.

(a) An owner of residential rental property within this city shall maintain with the Maricopa County Assessor information required by this section in a manner to be determined by the assessor. The owner shall update any information required by this section within ten (10) days after a change in the information occurs. The following information shall be maintained:

(1) The name, address and telephone number of the property owner;

(2) If the property is owned by a corporation, limited liability company, partnership, limited partnership, trust or real estate investment trust, the name, address and telephone number of any of the following:

a. For a corporation, a corporate officer;

b. For a partnership, a general partner;

c. For a limited liability company, the managing or administrative member;

d. For a limited partnership, a general partner;

e. For a trust, a trustee; or

f. For a real estate investment trust, a general partner or an officer.

(3) The street address and parcel number of the property; and

(4) The year the building was built.

(b) An owner of residential rental property who lives outside this state shall designate and record with the assessor an agent who lives in this state and who will accept legal service on behalf of the owner. The owner shall designate the agent in a manner to be determined by the assessor. The information shall include the name, address and telephone number of the agent.

(c) Residential rental property shall not be occupied if the information required by this section is not on file with the county assessor. This subsection applies to any existing lease and to any new lease after August 25, 2004.

(d) All records, files and documents that are required by this section are public records.

(e) A person who fails to comply with any provision of this section shall be cited pursuant to § 21-42(b). Violations of this subsection shall be assessed a civil penalty of one thousand dollars ($1,000), plus an additional one hundred dollars ($100) for each month after the date of the original violation until compliance occurs. The court shall not suspend any portion of the civil penalty provided by this subsection.

(f) Notwithstanding subsection (e) of this section, if a person complies within ten (10) days after receiving the complaint that notices the violation, the court shall dismiss the complaint and shall not impose a civil penalty.
(Ord. No. 2002.06, 5-30-02; Ord. No. 2007.80, 12-13-07)

Sec. 21-26. Information furnished to tenants.

(a) *Informational material furnished to owners.* The city shall provide informational material explaining the Rental Housing Code. The city shall make such material available to local owners, agents and managers of rental housing units without charge.

(b) *Informational material furnished to tenants.* When such material is made available by the city, no owner, agent or manager shall lease, rent or otherwise make available for occupancy by tenants any rental housing unit without furnishing to the tenant(s), prior to the time of occupancy, a copy of said materials.

(c) *Distribution of material; multiple tenants.* In the event the rental housing unit is being leased or rented to more than one tenant, it shall be sufficient to offer a single copy of the material for each rental housing unit.

(d) *Lease renewals.* For the purposes of this section, the renewal of a lease or rental agreement shall be considered the same as the making of a new lease or rental agreement; however, if an owner, agent or manager has previously furnished a tenant of a rental housing unit a copy of the material, the owner, agent or manager shall not be required to furnish another copy of the material upon the renewal of the lease or rental agreement, unless one is requested by the tenant.

(e) *Rental or lease agreement requirements.* No owner, agent or manager of a rental housing unit shall execute a lease or rental agreement or otherwise make available for occupancy by tenants any rental housing unit, unless a statement is contained in the lease or rental agreement, in boldface type no smaller than the remainder of the agreement, in substantially the following form: "Upon the execution of a lease or rental agreement for a rental housing unit, a tenant is entitled to receive a copy of the informational material provided by the City of Tempe concerning rental housing standards. By executing this lease or rental agreement, the tenant acknowledges receipt of such material."
(Ord. No. 2002.06, 5-30-02; Ord. No. 2007.80, 12-13-07)

Secs. 21-27—21-30. Reserved.

DIVISION 2. RENTAL HOUSING STANDARDS

Sec. 21-31. Sanitary facilities.

(a) *General provision.* Every rental housing unit should have sanitary facilities, adequate for personal cleanliness and the disposal of human waste, which are properly installed and maintained in sound condition, free from defects, leaks or obstructions and connected to a safe supply of potable water and an approved sewage system.

(b) *Flush toilet.* Every rental housing unit shall contain a room that is equipped with a flush toilet in sound condition and properly connected to an approved water and sewage system. Every flush toilet shall have:

(1) An integral water-seal trap that eliminates the passage of sewage gases into the room; and

(2) Smooth, impervious, easily cleanable surfaces free from cracks or breaks and makeshift repairs that leak or are likely to cause injury to someone and shall be equipped with seats and flush tank covers constructed of smooth impervious materials free of cracks or breaks that leak or are likely to injure a person.

(c) *Lavatory basins.* Every rental housing unit shall contain a fixed lavatory basin in sound condition and properly connected to an approved hot and cold water system and a sewage system. The basin shall be in the same room as the toilet or as near to that room as practicable. If a rental housing unit contains a flush toilet in more than one room, it shall also contain a fixed lavatory basin in each room with a flush toilet or as near to each room as is practicable.

Lavatory basin surfaces shall be smooth, easily cleanable, impervious and free from cracks or breaks that leak or are likely to cause injury to a person. Sinks used for kitchen purposes and bathtubs are not acceptable substitutes for lavatory basins.

(d) *Bathtub or shower*. Every rental housing unit shall contain a room that is equipped with a bathtub or shower in sound condition and properly connected to an approved hot and cold water system and a sewage system. Every bathtub shall have a smooth, impervious and easily cleanable inner surface, with a pitch sufficient to drain properly, free from makeshift repairs and free from cracks or breaks that leak or are likely to cause injury to a person. Every shower compartment or cabinet shall have a base with a leak-proof receptor that is made of impervious materials with a pitch sufficient to drain properly. The interior walls shall be made of a smooth, impervious, easily cleanable material free from cracks or breaks that leak or are likely to cause injury to a person. Built-in bathtubs with overhead showers shall have waterproof joints between the tub and the adjacent walls and the walls shall be made of impervious material free from cracks or breaks that leak or are likely to cause injury to a person.

(e) *Hot water service*. Every rental housing unit shall have hot water service properly installed and maintained in sound condition capable of furnishing reasonable amounts of hot water with a minimum temperature of one hundred ten degrees (110º). Water heating units shall be equipped with a temperature and pressure relief valve and a discharge line in accordance with the Tempe plumbing code.

(f) *Water-seal traps*. Bathroom plumbing fixtures, except those having integral traps, shall be separately trapped by a water-seal trap that will eliminate the passage of sewage gases into the room. The water-seal trap shall be located as near the outlet as possible.

(g) *Flow of water*. Bathroom plumbing fixtures shall have a reasonable flow of water and the minimum flow of hot or cold water issuing from a faucet or fixture shall be not less than one gallon per minute.
(Ord. No. 2002.06, 5-30-02)

Sec. 21-32. Food preparation facilities.

(a) *General provision.* Every rental housing unit should have a kitchen or kitchen area with suitable space and equipment to store, prepare and serve food in a sanitary manner. Adequate facilities for the disposal of food waste and refuse should also be provided.

(b) *Kitchen sink*. Every kitchen or kitchen area shall contain a fixed kitchen sink in sound condition, functioning properly and properly connected to an approved hot and cold water system and a sewage system. Each kitchen sink shall be of seamless construction and impervious to water and grease. The interior surfaces shall be smooth with rounded internal angles and corners, easily cleanable and free from cracks or breaks that leak or are likely to cause injury to a person. Lavatory basins and bathtubs are not acceptable substitutes for required kitchen sinks.

(c) *Water-seal traps*. Kitchen plumbing fixtures shall be separately trapped by a water-seal trap that will eliminate the passage of sewage gases into the kitchen. The water-seal traps shall be located as near the outlet as possible. .

(d) *Flow of water*. Kitchen plumbing facilities shall have a reasonable flow of water and the minimum flow of hot or cold water issuing from a faucet or fixture shall be not less than one gallon per minute.

(e) *Oven and range or stove*. Every kitchen or kitchen area shall be equipped with a cooking oven and range or a stove properly connected and in sound condition. If the oven and range or stove is provided by the tenant per the rental agreement, the owner, agent or manager is exempt from the provisions of this section.

(f) *Refrigerator*. Every kitchen or kitchen area shall be equipped with a refrigerator properly connected and in sound condition. Refrigerators shall be capable of maintaining a temperature between forty degrees (40º) and forty-five degrees (45º) Fahrenheit. Refrigerators shall have some capacity for storing frozen food. If the refrigerator is provided by the tenant per the rental agreement, the owner, agent or manager is exempt from the provisions of this section.

(g) *Sanitary surfaces; preparation and storage areas*. Countertops, food preparation surfaces, food storage pantries and cupboards shall be easily cleanable and free from holes, breaks or cracks that can leak, are likely to cause injury to a person or could permit the harborage of insects and dampness that could promote the growth of bacteria.

(h) *Storage of garbage*. No owner, agent or manager of any rental housing unit shall permit upon his premises the exterior accumulation of any garbage or refuse, except in covered portable containers of rust-resistant metal, rubber, plastic or similar material.

(i) *Removal of garbage*. The owner, agent or manager of a rental housing unit shall provide for the removal of garbage and refuse by a properly licensed and authorized refuse hauler sufficient to maintain a clean and sanitary condition on the premises or shall require the tenant, lessee or occupant to provide such service from a properly licensed and authorized refuse hauler.
(Ord. No. 2002.06, 5-30-02)

Sec. 21-33. Electrical and lighting.

(a) *General provision*. Every rental housing unit should have electrical service and lighting properly installed and maintained in sound condition adequate to support the health and safety of occupants, permit the safe use of electrical appliances and permit normal indoor activities.

(b) *Habitable rooms; outlets and lights*. Every habitable room shall contain at least two (2) electrical convenience outlets and either a permanently installed light fixture controlled by a wall switch or an additional electrical convenience outlet controlled by a wall switch. Ceiling or sidewall light fixtures controlled by a wall switch shall be required in all kitchens or kitchen areas. In addition to the above minimum requirements, every owner, agent and manager shall provide sufficient electrical outlets to service the appliances and fixtures furnished by the owner, agent or manager and located within the room.

(c) *Other rooms; outlets and lights*. Every laundry room, bathroom and toilet compartment shall contain at least one permanently installed ceiling or sidewall light fixture controlled by a wall switch. In addition to the above minimum requirements, every owner, agent and manager shall provide sufficient electrical convenience outlets to service the appliances and fixtures furnished by the owner, agent or manager and located within the room.

(d) *Ground-fault circuit-interrupters*. All electrical convenience outlets installed in bathrooms and within six (6) feet of a lavatory or kitchen sink shall have ground-fault circuit-interrupter protection, provided it can be installed without additional wiring to the main electrical service panel. As used in this section, a bathroom is an area with a tub or shower, with or without a lavatory.

(e) *Stairway and hall lights; except publi*c. Every stairway and hall, except public or common stairways and halls, shall contain at least one ceiling or sidewall light fixture controlled by a wall switch except where light is available from a permanent source or an adjacent space. The switch or switches shall be located so as not to have to traverse darkened areas to access them.

(f) *Stairway and hall lights; public*. Every public or common stairway, hallway, corridor or breezeway in or leading into multifamily dwellings shall be lighted, by natural or artificial means, at all times.

(g) *Exterior entrances; multifamily*. Every building serving four (4) or more rental housing units shall have the main building entrances lighted with specific lighting during nighttime hours. The entrances into individual rental housing units shall also be provided with specific lighting which shall be controlled either automatically or manually by a switch controlled by the tenant.

(h) *Exterior areas; multifamily*. Every common area, accessory use area, aisle, passageway, pedestrian walkway and sidewalk of buildings serving four (4) or more rental housing units shall be lighted with specific lighting during nighttime hours.

(i) *Parking lots; multifamily*. Common parking lots and covered and uncovered parking areas serving four (4) or more rental housing units shall be lighted with specific lighting during nighttime hours.

(j) *Mailboxes; multifamily*. Postal service "gang boxes" in buildings serving four (4) or more rental housing units shall be lighted with specific lighting during nighttime hours.

(k) *Installation and maintenance*. Every outlet, switch and fixture shall be properly installed and maintained in sound condition. No owner, agent or manager shall provide, install or allow to be installed or used any frayed and exposed wiring; wiring unprotected by proper covering; fixtures in disrepair; tacked extension cording; or makeshift wiring, outlets or fixture repairs.
(Ord. No. 2002.06, 5-30-02)

Sec. 21-34. Thermal environment.

(a) *General provision*. Every rental housing unit should contain safe heating and cooling facilities which are properly installed and maintained in sound condition and capable of providing adequate heating and cooling, appropriate for the climate, to assure a comfortable and healthy living environment.

(b) *Heating requirements*. Every rental housing unit shall have heating, under the tenant's control, capable of safely heating all habitable rooms, bathrooms and flush toilet rooms located therein to a temperature of at least seventy degrees (70º) Fahrenheit at a distance three (3) feet above floor level in the center of the room. Required heating shall be provided by permanently installed heating facilities.

(c) *Cooling requirements*. Every rental housing unit shall have cooling, under the tenant's control, capable of safely cooling all habitable rooms, bathrooms and flush toilet rooms located therein to a temperature no greater than eighty-eight degrees (88º) Fahrenheit, if cooled by evaporative cooling, or eighty-two degrees (82º) Fahrenheit, if cooled by air conditioning. Temperature measurements shall be taken at a distance three (3) feet above floor level in the center of the room. Required cooling shall be provided by permanently installed cooling facilities. Except that those air conditioning facilities serving more than one rental housing unit shall only be required to be designed and operating in conformance with manufacturer's specifications.

(d) *Unvented combustion heaters; prohibited*. No owner, agent or manager shall provide, install or allow to be installed or used any unvented portable space heaters burning solid, liquid or gaseous fuels.

(e) *Cooking appliances as heaters; prohibited*. No owner, agent or manager shall allow the use of any ovens, stoves or ranges, or other cooking appliances for the purpose of heating any portion of a dwelling.
(Ord. No. 2002.06, 5-30-02)

Sec. 21-35. Doors; windows; ventilation.

(a) *General provision*. Every rental housing unit should have doors and windows which provide adequate natural light and ventilation to permit normal indoor activities and at the same time support the health and safety of the occupants while providing protection from the elements and privacy for the occupants.

(b) *Habitable rooms; natural light*. Every habitable room within a rental housing unit shall have at least one exterior glazed opening, facing directly to the outside, to provide natural light. The total glazed area for each habitable room shall be not less than ten (10) square feet. Kitchens and kitchen areas shall not be required to meet the glazed exterior opening requirement.

(c) *Habitable rooms; ventilation*. Every habitable room within a rental housing unit shall have at least one openable exterior opening, vented directly to the outside air, to provide natural ventilation. The total area of openable venting for each habitable room shall be not less than five (5) square feet. Habitable rooms, except those used for sleeping, shall not be required to meet

the openable exterior opening requirement if mechanical ventilation is provided. Kitchens and kitchen areas shall not be required to meet the openable exterior opening requirement if mechanical ventilation is provided.

(d) *Other rooms; ventilation*. Every bathroom, flush toilet room and laundry room shall have at least one openable exterior opening, vented directly to the outside air, to provide natural ventilation. The total area of openable venting shall be not less than one and one-half (1½) square feet. Bathrooms, flush toilet rooms and laundry rooms shall not be required to meet the openable exterior opening requirement if mechanical ventilation is provided.

(e) *Screened openings*. Any rental housing unit which is cooled by evaporative cooling and is not equipped with upducts or other similar venting, shall have at least one openable exterior opening which is screened. All required screens shall be free from tears, holes or imperfections of the frame that could admit insects and other vermin detrimental to the health of the occupants. Any screens which are provided by the owner, agent or manager shall be maintained in sound condition and in good working order.

(f) *Glazing.* Glazed areas shall be soundly glazed and free from missing, loose, cracked or broken glass that is likely to injure a person, allows the elements or vermin to enter the structure, allows air escape or infiltration, or otherwise diminishes the thermal efficiency of the structure.

(g) *Windows*. Windows shall be maintained in sound condition. Exterior windows shall fit the window openings and shall be properly sealed or weatherstripped in a manner that prevents the entrance of the elements or vermin or excessive air escape or infiltration. The fit of exterior windows shall not otherwise diminish the thermal efficiency of the structure.

(h) *Exterior doors*. Exterior doors leading into rental housing units shall fit the door openings and shall also be weatherstripped in a manner that prevents the entrance of the elements or vermin or excessive air escape or infiltration. The fit of exterior doors shall not otherwise diminish the thermal efficiency of the structure. Exterior doors, garage doors, door hardware and door frames shall be maintained in sound condition and capable of the use intended by their design. Any hollow core or solid core doors leading into rental housing units which are replaced after the effective date of this code, shall be replaced with solid core or metal wrapped doors that have a sound transmission rating at least equal to the rating of the door being replaced.

(i) *Interior doors*. Interior doors, door hardware and door frames shall be maintained in sound condition free from holes, breaks or cracks and capable of the use intended by their design. They shall also be capable of affording privacy to the occupants.
(Ord. No. 2002.06, 5-30-02; Ord. No. 2007.80, 12-13-07)

Sec. 21-36. Space and occupancy.

(a) *General provision*. Every rental housing unit should have sufficient access and space to allow for adequate living and sleeping conditions while providing for the occupant's health, safety, privacy and general welfare.

(b) *Floor area; rental housing unit.* Every rental housing unit shall have at least two hundred twenty (220) square feet of total room area and shall contain at least one common room having not less than one hundred twenty (120) square feet.

(c) *Floor area; habitable room.* Every habitable room, except a kitchen, shall have not less than seventy (70) square feet of habitable room area and shall not be less than seven (7) feet in any dimension.

(d) *Occupancy load; sleeping room.* Every rental housing unit shall contain at least one bedroom or living/sleeping room of appropriate size for each two (2) persons. Every room occupied for sleeping purposes by one person shall contain at least seventy (70) square feet of habitable room area and every room occupied for sleeping purposes by two (2) people shall contain at least fifty (50) square feet of habitable room area for each person.

(e) *Occupancy load; rental housing unit.* Every rental housing unit shall provide at least two hundred twenty (220) square feet of floor area for the first two (2) occupants and one hundred (100) square feet of floor area for each additional occupant. The floor area is to be calculated on the basis of total dwelling unit area.

(f) *Bedroom access.* In any rental housing unit that has more than one bedroom, access to any bedroom shall not be through another bedroom or a bathroom.

(g) *Bathroom access.* In any rental housing unit, the occupants of each bedroom must have access to a bathroom without going through another bedroom.

(h) *Interior access.* In any rental housing unit, access to bedrooms and bathrooms shall be from within the unit.
(Ord. No. 2002.06, 5-30-02)

Sec. 21-37. Safety and security.

(a) *General provision.* Every rental housing unit should have security devices which restrict unlawful entry, smoke detectors to provide fire safety and should be maintained free from hazards to the health, safety or welfare of the occupants.

(b) *Stairway; tripping hazard.* Every inside and outside stairway shall be maintained in sound condition and free from any broken, rotted or missing steps or tripping hazards.

(c) *Stairway; handrail.* Every inside and outside stairway which contains four (4) or more risers shall be provided with a handrail in sound condition securely fastened to a wall or balusters.

(d) *Stairway; guardrail and enclosures.* Every stairway which exceeds thirty (30) inches in height shall be protected by a guardrail and enclosure material in sound condition. The openings in the enclosure material shall be of a size to prohibit a spherical object seven (7) inches in diameter from passing through or under.

(e) *Balcony and porch; guardrail and enclosures.* Every balcony or porch higher than thirty (30) inches above the ground shall be protected by a guardrail and enclosure material in sound condition. The openings in the enclosure material shall be of a size to prohibit a spherical object seven (7) inches in diameter from passing through or under.

(f) *Locking devices; exterior doors.* Exterior doors leading into rental housing units or tenant storage rooms, which are reasonably accessible, shall have a locking device properly installed and in sound condition capable of the use intended by its design. Specific requirements are as follows:

(1) Swinging exterior doors leading into rental housing units shall have dead bolt locks with a minimum one inch throw; and

(2) Sliding doors shall be provided with a locking device or devices which prevent lifting or sliding of the locked door from the exterior of the unit.

(g) *Door viewers.* Every principal entrance door shall be equipped with at least a one hundred sixty degree (160º) eyeviewer. Principal entrance doors which contain a window or have an adjacent window which allows a view of the area directly in front of the door, shall not require an eyeviewer.

(h) *Locking devices; windows.* Every openable window reasonably accessible from the outside shall have a locking device or devices properly installed and in sound condition capable of the use intended by its design. Such devices shall prevent opening, lifting or sliding of the locked window from the exterior of the unit.

(i) *Smoke detectors.* Smoke detectors shall be installed in all existing rental housing units. The installation of smoke detectors shall meet the requirements of the currently adopted building code. The owner shall be responsible for the installation, replacing the battery annually (if battery operated) and maintaining appropriate records of required smoke detectors. Upon termination of a tenancy in any rental housing unit, the owner, owner's agent or manager shall insure that any required smoke detectors are operational prior to reoccupancy of the unit.
(Ord. No. 2002.06, 5-30-02; Ord. No. 2007.80, 12-13-07)

Sec. 21-38. Maintenance.

(a) *General provision.* Every rental housing unit interior and exterior should be maintained in a condition which provides the occupants with protection from the elements, a safe and healthy living environment and housing free from deterioration or slum-like conditions.

(b) *Interior; holes, cracks or breaks.* Every floor, interior wall and ceiling, cabinet and all appurtenances thereto shall be kept in sound condition and free of holes, cracks or breaks that could injure a person, admit or harbor insects or rodents, admit dampness or restrict privacy. Every hole cut in floors, walls or ceilings for the passage of plumbing fixtures or pipes shall be sealed to prevent the passage of insects, rodents or vermin.

(c) *Interior; paint and plaster*. Every floor, interior wall and ceiling, cabinet and all appurtenances thereto shall be kept free of any loose, cracked, scaling, chipping or peeling paint or plaster. All interior painted surfaces shall be painted with paint which is lead free.

(d) *Floor coverings; tripping hazards*. Floor coverings that are torn or loose and located on a stairway or within three (3) feet of a stairway shall be removed or repaired to prevent tripping. Tears in excess of six (6) inches and tears or projections rising one-quarter (¼) inch or more above the floor surface in any location present a tripping hazard and shall be repaired.

(e) *Floor coverings; deteriorated, unsafe, unsanitary*. Floor coverings such as carpeting, tile, linoleum and similar materials shall be repaired or replaced when the floor covering is severely deteriorated or when the condition of the floor covering creates an unsafe or unsanitary environment.

(f) *Exterior; weather tight, watertight and vermin proof.* Every foundation, roof and exterior wall shall be reasonably weather tight, watertight and vermin proof and shall be kept in sound condition.

(g) *Exterior; deteriorated or slum-like*. All exposed exterior surfaces shall be maintained so as to be impervious to moisture and weather elements and every rental housing unit shall be free of broken, rotted, split or buckled exterior wall coverings or roof coverings. All exposed exterior surfaces shall not otherwise present a deteriorated or slum-like appearance and will meet the specific requirements which follow:

(1) All exterior wood surfaces shall be protected from the elements and from deterioration by paint or other protective treatment; except such wood surfaces composed of wood that is naturally resistant to decay;

(2) All exterior painted surfaces shall be painted with paint that is lead free and shall be free of loose, cracked, scaling, chipping or peeling paint in such amounts as to present a deteriorated or slum-like appearance;

(3) Roof coverings shall be watertight and weather tight and shall be free of broken, rotted, split, curled or missing roofing material in such amounts as to present a deteriorated or slum-like appearance. All roofing materials shall meet the requirements of the Tempe building code; and

(4) Replacement materials and paint used to repair or repaint exterior surfaces of a rental housing unit shall be visually compatible with the remainder of the materials and paint on the exterior of the unit.

(h) *Landscaping*. Every rental housing unit shall have landscaping in all yard areas which are visible from a public street, alley or sidewalk or a neighboring property. Such landscaping shall be installed and maintained so as to enhance the appearance and value of the property on which it is located and shall not present a deteriorated or slum-like appearance.

(i) *Exterior areas; tripping hazards*. Every common area, sidewalk, driveway, parking lot and parking area of rental housing units shall be free from holes, depressions or projections that are likely to cause tripping or injury to a person or otherwise present a hazard.

(j) *Inoperable vehicles; common parking areas*. Common parking lots and parking areas, serving more than one rental housing unit, shall be maintained free from the storage of abandoned, wrecked, dismantled, unregistered or inoperable vehicles.

(k) *Inoperable vehicles; other areas*. Parking areas serving only one rental housing unit, shall be maintained free from the storage of wrecked, dismantled or inoperable vehicles when such vehicles can be seen from a public street or sidewalk or a neighboring property. It is an affirmative defense to a violation of this subsection based on a wrecked, dismantled or inoperable vehicle, that the vehicle was titled to a resident of the property, that the vehicle was undergoing repair, and that the wrecked, dismantled or inoperable vehicle was repaired and any evidence of the repairs was removed within fourteen (14) days after the repair was begun.

(l) *Swimming pools; maintenance*. All swimming pools, architectural pools and spas shall be properly maintained so as not to create a safety hazard, harbor insect infestation or create a deteriorated or slum-like appearance.

(m) *Stagnant water*. All premises shall be maintained so as to prevent the accumulation of stagnant water when such water causes a hazardous or unhealthy condition, becomes a breeding area for insects or causes damage to foundation walls.

(n) *Infestation*. Every rental housing unit and premises shall be kept free from insect, rodent or vermin infestation. Every rental housing unit and premises shall be free from the presence or apparent evidence of insect or rodent infestation, other noxious pests, nesting places and any other unsightly or unsanitary accumulation which could harbor insects, rodents or other vermin.

(o) *Maintenance of facility and equipment*. Every supplied facility, piece of equipment or utility shall be so constructed, installed and maintained that it will function safely and effectively and remain in sound condition.

(p) *Discontinuation of services*. No owner, agent or manager shall cause any services, facilities, equipment or utilities which are required under this code to be removed from, shut off or discontinued in any occupied rental housing unit except for such temporary interruption as may be necessary while actual repairs or alterations are in process.

(q) *Responsibility for maintenance*. It shall be the responsibility of the owner, agent and manager to provide for the interior and exterior maintenance of the rental housing unit and premises.
(Ord. No. 2002.06, 5-30-02)

Secs. 21-39—21-40. Reserved.

ARTICLE III. ADMINISTRATION AND ENFORCEMENT

Sec. 21-41. Commencement of action.

(a) The community development department is assigned the primary responsibility of enforcing this chapter and is granted the authority expressly and impliedly needed and necessary for enforcement.

(b) Nothing in this section shall preclude employees of the community development department from seeking voluntary compliance with the provisions of this chapter or from enforcing this chapter, proactively or reactively, through warnings, notices to comply, or other such devices designed to achieve compliance in the most efficient and effective manner under the circumstances.

(c) The community development department is authorized to recommend reasonable and necessary rules and regulations to carry out the provisions of this article which shall be approved by resolution of the city council.
(Ord. No. 2002.06, 5-30-02; Ord. No. 2005.18, 4-7-05; Ord. No. 2009.38, 10-22-09; Ord. No. 2010.02, 2-4-10)

Sec. 21-42. Remedies and penalties.

(a) *Cumulative remedies*. The remedies herein are cumulative when there are separate violations and the city may proceed under one or more of such remedies when there is more than one violation. Remedies and penalties will be pursued by the city in conformance with the rules and regulations adopted pursuant to this chapter.

(b) *Civil sanction*. Any person who causes, permits, facilitates or aids or abets any violation of any provision of this chapter or who fails to perform any act or duty required by this chapter is subject to a civil sanction as enumerated in the fine schedule adopted by the city council. In no circumstances shall the fine be less than the current fine schedule and total fines shall not exceed two thousand dollars ($2,000) per day for each property. In addition to the amount of the fine imposed, there is imposed a default penalty in the amount of fifty dollars ($50) should the defendant fail to appear and answer for a violation of this chapter within the time period stated on the citation or fails to appear at the time and place set by the court for a matter arising under this chapter.

(c) *Criminal misdemeanor*. Notwithstanding the provisions of subsection (b) above, any person who causes, permits, facilitates or aids or abets any violation of any provision of this chapter or who fails to perform any act or duty required by this chapter is guilty of a class 1 misdemeanor. The city prosecutor is authorized to file a criminal misdemeanor complaint in the Tempe Municipal Court for violation of this chapter. The rental agent or property manager may avoid criminal liability by forwarding a copy of the notice to comply to the owner if it is sent by certified mail/return receipt requested within two (2) days of receiving the notice to comply.

(d) *Separate offenses*. Each day any violation of any provision of this chapter or the failure to perform any act or duty required by this chapter exists, shall constitute a separate violation or offense.

(e) *Property owner*. For the purpose of enforcement of this chapter, the owner of record, as recorded by the Maricopa County Recorder's office, of the property upon which the violation exists, shall be presumed to be a person having lawful control over the property. If more than one person shall be recorded as the owner of the property, said persons shall be jointly and severally presumed to be persons having lawful control over the property. This presumption shall not prevent enforcement of the provisions of article II against any person specified in subsection (b) or (c) of this section.

(f) *Abatement*. In addition to any other sanction or penalty authorized under subsection (b) or (c) of this section, the designated hearing officer may issue an order directing the owner, occupant, rental agent, property manager or responsible person to abate the violation or authorize the city to abate the condition giving rise to the violation. The costs of such abatement shall be the responsibility of the owner of the property where the violation occurred and may be collected as an assessment against the property found to be in violation.
(Ord. No. 2002.06, 5-30-02; Ord. No. 2007.80, 12-13-07; Ord. No. 2009.38, 10-22-09)

Sec. 21-43. Notice to comply.

(a) *Notification*. If the city finds a violation of this chapter, in the first instance, in any given twelve (12) month period, the city shall notify the responsible person through the issuance of a notice to comply.

(b) *Contents of notification*. A notice to comply issued pursuant to this code shall include:

(1) Identification of the property in violation;

(2) Statement of violation in sufficient detail to allow the owner, occupant, rental agent, property manager or responsible person to identify and correct the problem;

(3) Compliance date which shall be a reasonable time period as determined by the inspector or adopted by resolution of the city council;

(4) Name and phone number of the inspector;

(5) Criminal and civil penalties for failing to correct the violation; and

(6) City authority to abate the violation should the owner neglect, fail or refuse to correct the violation within thirty (30) days and to assess the property for the cost of abatement.

(c) *Service of notice*. The notice to comply may be served and shall be deemed proper and complete by any of the following methods:

(1) Delivered in person to the owner, occupant, manager or agent of the premises where the violation has occurred, or to the person responsible for the violation;

(2) Posted on or about the entrance of the premises where the violation occurred;

(3) By first class mail, postage prepaid, addressed to the owner, occupant, agent, manager or responsible person at the last known address. Service by mail is deemed complete upon deposit in the U.S. mail.

(4) Serving the owner, occupant, agent, manager or responsible person in the same manner as provided by the Arizona Rules of Civil Procedure.

(d) *Additional notice; notice not required.* Nothing herein shall preclude the city from giving additional verbal or written notice at its discretion but it is not obligated to notify the same person as to a second (or additional) violation which has been the subject of a notice to comply within the previous twelve (12) month period. If the city does elect to give any additional notice in any instance, it shall not thereby become obligated to give such additional notice thereafter in the same or other situations. Nothing in this section shall require the issuance of a second notice to comply within twelve (12) months prior to commencement of civil or criminal violation proceedings.

(e) *Notification–habitual offender.* Complaints on properties owned by habitual offenders will proceed through an expedited process. The expedited process applies to any person who meets the definition of habitual offender, whether or not the person has been convicted under § 21-4(b). Habitual offenders are not entitled to a time period to cure infractions or other written or formal notice of violations. Upon discovering that a property is owned by a habitual offender, the code inspector may:

(1) Initiate court or abatement action without providing written or formal notice to the responsible party;

(2) Issue a formal notice of violation or civil infraction citation, including notification that the responsible party has been deemed a habitual offender; or

(3) Initiate abatement action or criminal proceedings against the responsible party.

(Ord. No. 2002.06, 5-30-02; Ord. No. 2007.80, 12-13-07; Ord. No. 2009.38, 10-22-09)

Sec. 21-44. Jurisdiction.

Unless otherwise specified, the Municipal Court of the City of Tempe shall have jurisdiction of all proceedings to enforce this chapter.

(Ord. No. 2002.06, 5-30-02)

Sec. 21-45. Transfer of property after notice.

(a) *Written assumption of responsibility.* The transfer of any or all property interest in any manner, including but not limited to, the sale, trade, lease, gift or assignment of any real property against which a notice to comply has been issued or allegations of violations have been filed with the court shall not relieve the parties unless the legal entity assuming interest in such property, in writing, assumes responsibility for compliance with the notice to comply or alleged violations and a copy of such writing is presented to the city.

(b) *Criminal violation*. Any legal entity, real or statutory, who transfers the ownership interest in real property, against which a notice to comply has been issued or allegations of violations have been filed with the court, shall be guilty of a class 1 misdemeanor unless they have obtained a written acceptance of responsibility for compliance with the notice or court action from the new owner.
(Ord. No. 2002.06, 5-30-02)

Sec. 21-46. Vacation of tenants; reoccupancy.

(a) *Comply even if vacated*. An owner, agent or manager served with a notice to comply or enforcement proceeding for violations of article II of this chapter shall not be relieved from responsibility to comply because the tenant(s) have vacated the rental housing unit.

(b) *Compliance before reoccupancy*. The owner, agent or manager of a rental housing unit shall not lease, rent or otherwise make available for occupancy by tenants any unit against which a notice to comply has been issued or an enforcement action has been instituted until the violations contained in the notice to comply or enforcement proceeding have been corrected.
(Ord. No. 2002.06, 5-30-02)

Sec. 21-47. Commencement of civil action.

(a) After issuing a notice to comply and if the violation(s) is not corrected within the designated time, the community development director or designee is authorized to commence a civil action under this chapter by issuing a citation to the occupant of the property where the violation has occurred, the owner, agent or manager of record, or any person responsible for the violation.

(b) The citation form will be substantially in the same form as the Arizona traffic citation currently in use and shall direct the defendant to appear in Tempe Municipal Court or pay the fine imposed pursuant to this chapter within fourteen (14) days after issuance of the citation. The citation shall contain the date and location of the violation, reference to the city code provision violated, and notice that within fourteen (14) days from the date on which the citation was issued, the fine for the violation must be paid to and received by the Tempe Municipal Court or a request for a hearing be made to and received by the Tempe Municipal Court. The form shall also contain a schedule of fines and penalties that are imposed by this chapter. The fines and penalties schedule shall be adopted by resolution of the city council.

(c) *Service of citation*. The citation shall be served by delivering a copy to the defendant by any of the following means:

(1) By service upon the defendant;

(2) By posting the citation on the property where the violation has occurred or upon the property of the person responsible for the property where the violation has occurred;

(3) By first class mail, postage prepaid, addressed to the defendant at the last known address. Service by mail is deemed complete upon deposit in the U.S. mail; or

(4) By any of the methods described in Rules 4, 4.1 or 4.2, Arizona Rules of Civil Procedure.

(d) *Default.* The citation shall state that if the defendant fails to appear within the time specified, and either pay the fine for the violation or request a hearing, judgment by default will be entered in the amount of the fine designated on the citation for the violation charged plus a penalty amount as established by this chapter for the defendant's failure to appear.
(Ord. No. 2002.06, 5-30-02; Ord. No. 2005.18, 4-7-05; Ord. No. 2009.38, 10-22-09; Ord. No. 2010.02, 2-4-10)

Sec. 21-48. Appearance or payment by mail.

(a) The defendant shall, within fourteen (14) days of the issuance of the citation, appear in person or through his attorney in the Tempe Municipal Court, and shall either admit or deny the allegations contained in the citation, or defendant may proceed as provided in subsection (b) below. If the defendant admits the allegations, the court shall immediately enter judgment against the defendant in the amount of the fine for the violation charged as set by this chapter. If the defendant denies the allegations contained in the citation, the court shall set a date for a hearing on the matter.

(b) The defendant may admit the allegation in the citation and pay the fine indicated by mailing the citation together with a check for the amount of the fine to and made payable to the Tempe Municipal Court. Appearance by mail will be deemed complete by the postmarked date on the mailing.

(c) Any defendant who appears in the Tempe Municipal Court and denies the allegations as provided in subsection (a) above shall be deemed to have waived any objection to service of the citation, unless such objection is affirmatively raised by the defendant at the time of the first appearance in relation to the citation.
(Ord. No. 2002.06, 5-30-02)

Sec. 21-49. Default judgment.

If the defendant fails to appear as directed on the citation, the court, upon request of the community development director or designee, shall enter a default judgment for the amount of the fine indicated for the violation charged, together with a penalty for the defendant's failure to appear as established by this chapter. If a defendant fails to appear at a hearing, the court may enter judgment against the nonappearing defendant for the amount of the fine plus a penalty for failure to appear as established by this chapter. No judgment may be entered against a fictitiously identified defendant, unless the citation is amended to reflect the true identity of the defendant who received the citation.
(Ord. No. 2002.06, 5-30-02; Ord. No. 2005.18, 4-7-05; Ord. No. 2009.38, 10-22-09; Ord. No. 2010.02, 2-4-10)

Sec. 21-50. Rules of procedure for civil citations.

The Arizona Rules of Procedure in Civil Traffic Violation Cases may be followed by the Tempe Municipal Court for civil citations issued pursuant to this code except as modified or where inconsistent with the provisions for this code or as modified or established for use by the Arizona Supreme Court for the Tempe Municipal Court.
(Ord. No. 2002.06, 5-30-02)

Sec. 21-51. Collection of civil sanction, reinspection fees.

(a) The court may enforce collection of delinquent fines, fees and penalties as may be provided by law. In addition, any judgment for a civil sanction imposed pursuant to this code shall constitute a lien against the real property of the owner of the rental housing unit where the violation occurred. The lien may be perfected by recording a copy of the judgment under seal of the City of Tempe with the Maricopa County Recorder. Any judgment for civil sanction pursuant to this code may be collected as any other civil judgment.

(b) Any person who neglects, fails or refuses to correct the violations contained within a notice to comply or other similar device issued pursuant to this chapter may be assessed a reinspection fee for inspections which occur after the compliance date. The fee for these reinspections shall be set by resolution of the city council. Failure to pay reinspection fees within fourteen (14) days of assessment is a violation of this section. Reinspection fees may be collected as a lien against the real property where the violation occurred in accordance with § 21-53.
(Ord. No. 2002.06, 5-30-02)

Sec. 21-52. Interference with enforcement, abatement.

Any person who interferes with, prevents, or attempts to interfere with or prevent an individual employed by the city or other person contracted for by the city, from investigating an alleged violation of this chapter, or from correcting or abating a violation of this chapter is guilty of a class 1 misdemeanor.
(Ord. No. 2002.06, 5-30-02)

Sec. 21-53. Abatement.

(a) *Hearing Officer authorized.* When a person is served with a notice to abate in accordance with A.R.S. § 9-499 to comply with the provisions of this code concerning matters within the scope of A.R.S. § 9-499 and neglects, fails or refuses to abate a violation for more than thirty (30) days from the effective date of the notice, the designated hearing officer shall hold an administrative hearing pursuant to the notice regarding whether an order should be entered authorizing the community development director or designee to abate any condition that constitutes a violation. The hearing officer, after the hearing (or time for hearing should the person fail to appear) shall enter such rulings and orders which it determines to be appropriate including an order authorizing the city to abate the condition, including the authorization of multiple abatements for a period not to exceed one hundred eighty (180) days from the previous abatement order.

(b) *Appeals.* Any person aggrieved by a decision of the designated hearing officer may appeal to the city's board of adjustment.

(c) *Statement of abatement expenses.* The community development director or designee, when so directed by the designated hearing officer to abate a violation of this code, shall prepare a verified statement and account of all expenses incurred by the city and file such verified statement and account with the designated hearing officer. The verified statement and account shall include the actual cost of such removal or abatement together with an administration charge as set by the city council by motion or resolution (Appendix A) with the cost of recording an assessment and releases thereof.

(d) *Collection of abatement expenses.* The person against whom the abatement order is issued shall have fifteen (15) days from the date of delivery or mailing of the statement of abatement expenses to pay. If the person fails to pay within the specified time period, the city manager or his designee shall prepare a duplicate copy of the statement and account as a notice of assessment and record one copy with the office of the Maricopa County Recorder and within ten (10) days thereafter serve the remaining copy of such notice of assessment upon the owner of the property assessed in accordance with A.R.S. § 9-499. The recorded assessment shall bear interest at the legal rate for judgments in the State of Arizona from the date that the assessment was recorded until it is paid in full. The assessment may be paid as provided in A.R.S. § 9-499(E).

(e) *Exemption.* The provisions of this section shall not apply to violations of article I, § 21-4 of this chapter.
(Ord. No. 2002.06, 5-30-02; Ord. No. 2005.18, 4-7-05; Ord. No. 2007.80, 12-13-07; Ord. No. 2009.38, 10-22-09; Ord. No. 2010.02, 2-4-10)

Sec. 21-54. Conflict of ordinances.

In any case where a provision of this code is found to be in conflict with a provision of any zoning, building, fire, safety, or health ordinance or code of the city, existing on the effective date of this code, the provision which establishes the higher standard for the promotion and protection of the health and safety of the community shall prevail.
(Ord. No. 2002.06, 5-30-02)

Sec. 21-55. Recording a violation.

The city may record a notice of violation with the county recorder. A recorded notice of violation shall run with the land. Failure to record a notice of violation shall not affect the validity of the notice as to persons who receive the notice. When the property is brought into compliance, a satisfaction of notice of violation shall be filed at the request of the owner or responsible party at the requestor's expense.
(Ord. No. 2002.06, 5-30-02)

Secs. 21-56—21-60. Reserved.

Chapter 22

OFFENSES — MISCELLANEOUS

ARTICLE I. IN GENERAL

Sec. 22-1. Prostitution; solicitation of prostitution.

(a) No person shall use or occupy any room in any hotel, roominghouse, dwelling house, tenement or other building whatever for the purpose of prostitution.

(b) A person is guilty of a misdemeanor who:

(1) Offers to, agrees to, attempts to commit, or commits an act of prostitution;

(2) Solicits or hires another person to commit an act of prostitution;

(3) Is in a public place or place open to public view and by word, sign or action manifests an intent to commit an act of prostitution; or

(4) Aids or abets the commission of any of the acts prohibited by this section.

(c) The following definitions shall apply to subsections (a) and (b):

(1) *Prostitution* means the act of performing sexual activity for hire by a male or female person.

(2) *Sexual activity* means vaginal or anal intercourse, oral-genital or oral-anal contact, masturbation, sodomy or bestiality.

(Code 1967, §§ 21-8, 21-9; Ord. No. 89.42, 7-27-89)

State law reference—Prostitution, A.R.S. § 13-3201 et seq.

Sec. 22-2. Enticing commission of lewd and lascivious act.

A person who entices by statements, suggestions, promises, threats, fraud, gestures or artifice another person, male or female, to engage in the commission of the infamous act against nature, fellatio, bestiality, buggery or any other lewd or lascivious act as defined by state law with the intent of arousing, appealing or gratifying the lust, passion or sexual desire of either himself or any such other person in such a place as can be viewed by the public, is guilty of a misdemeanor.

(Code 1967, § 21-17)

Sec. 22-3. Discharge of air rifles.

(a) Discharge of an air rifle is a misdemeanor except:

(1) As allowed pursuant to the provisions of Title 13, Chapter 4, Arizona Revised Statutes [A.R.S. § 13-401 et seq.];

(2) On a properly supervised range;

(3) In an area recommended as a hunting area by the state game and fish department, approved and posted as required by the chief of police, but any such area may be closed when deemed unsafe by the chief of police or the director of the game and fish department;

(4) For the control of nuisance wildlife by permit from the state game and fish department or the United States Fish and Wildlife Service;

(5) By special permit of the chief of police; or

(6) As required by an animal control officer in the performance of duties as specified in A.R.S. § 9-499.04.

(b) A "properly supervised range" for the purposes of this section means a range operated by a club affiliated with the National Rifle Association of America, the Amateur Trapshooting Association, the National Skeet Association, or any other nationally recognized shooting organization, any agency of the federal government, the state, the county or the city, or any public or private school, and, in the case of air or carbon dioxide gas operated guns or underground ranges on private or public property, such ranges may be operated with adult supervision.
(Code 1967, §§ 21-2, 21-3)

State law reference—Discharge of firearms, A.R.S. § 13-3107.

Sec. 22-4. Obstructing, interfering with use of public ways.

(a) It shall be unlawful for any person to obstruct any public street or alley, sidewalk or park or other public grounds within the city by committing any act or doing anything which is injurious to the health, or to do in or upon any such streets, alleys, sidewalks, parks or other public grounds, any act or thing which is an obstruction or interference to the free use of property or with any business lawfully conducted by anyone, in or upon or facing or fronting on any of such streets, alleys, sidewalks, parks or other public grounds in the city.

(b) No person shall obstruct or place any obstruction upon, across or along any street, alley or sidewalk in any manner.
(Code 1967, §§ 21-15, 30-1)

Sec. 22-5. Giving false information to police.

No person shall wilfully give false information to any police officer in the exercise and performance of his duty when such false information would interfere with, delay or obstruct the police officer in the exercise and performance of his duty.
(Code 1967, § 21-20)

Sec. 22-6. Resisting, interfering with police.

No person shall wilfully interfere with, resist, delay, obstruct, molest or threaten to molest any police officer in the exercise of his duty.
(Code 1967, § 21-12)

State law references—Obstructing governmental operations, A.R.S. § 13-2402; resisting arrest, A.R.S. § 13-2508.

Sec. 22-7. Depositing excavated material.

(a) No person shall deposit excavated material on any parcel of land within the city without first having obtained written permission from the owner of the parcel. Such written permission shall be in the possession of any person depositing fill material. All excavated material containing garbage, debris, trash, refuse, construction material or other waste shall be deposited in accordance with chapter 28 of this code.

(b) Excavated material shall be of natural earth material free from garbage, debris, trash, refuse, construction materials and other waste. Earth material is any rock, natural soil or fill or any combination thereof.
(Code 1967, § 21-21)

Sec. 22-8. Curfew for juveniles; responsibility of parents or guardians.

(a) *Definition.* In this section unless the context otherwise requires:

(1) *Emergency* means an unforeseen combination of circumstances or the resulting state that calls for immediate action.

(2) *Guardian* means a person who, under court order, is the guardian of the person of a minor or a public or private agency with whom a minor has been placed by an authorized agency or court; or least 21 years of age and authorized by a parent or guardian to have the care and custody of a minor.

(3) *Insufficient control* means failure to exercise reasonable care and diligence in the supervision of the juvenile.

(4) *Minor* means any person under eighteen years of age.

(5) *Parent* means a person who is a natural parent, adoptive parent or step-parent of another person.

(b) *Offenses.*

(1) It is unlawful for any minor under the age of sixteen years to be in, about, or upon any place in the city away from the property where the youth resides between the hours of 10:00 p.m. and 5:00 a.m. of the following day.

(2) It is unlawful for any minor sixteen years of age or older and under the age of eighteen years, to be in, about, or upon any place in the city away from the property where the child resides between the hours of 12:00 a.m. and 5:00 a.m.

(3) It is unlawful for a parent or guardian of a minor to knowingly permit, or by insufficient control, allow a minor to violate section (b)(1) or section (b)(2) as listed above.

(4) It is unlawful for a parent, guardian or other person having the care, custody or supervision of the minor to fail or refuse to take custody of the minor after such demand is made upon him by a law enforcement officer who arrests the minor for violation of section (b)(1) or (b)(2) as listed above.

(c) *Defenses/Exceptions.*

It is a defense to prosecution under subsection (b), including (b)(3) of this section that the minor was:

(1) Accompanied by the minor's parent or guardian.

(2) With prior permission of the parent or guardian, in a motor vehicle involved in interstate travel.

(3) With prior permission of the parent or guardian, in an employment activity or going to or returning home from an employment activity without any detour or stop by the most direct route.

(4) Involved in an emergency.

(5) With prior permission of the parent or guardian, was engaged in reasonable, legitimate, and specific business and/or activity. Examples include, but are not limited to, a juvenile with prior permission of the parent or guardian, attending an official school, religious or other recreational activity supervised by adults who take responsibility for the minor, or going to or returning home from an official school, religious or other recreational activity supervised by adults who take responsibility for the minor.

(6) With prior permission of the parent or guardian, engaged in a reasonable and legitimate exercise of First Amendment rights protected by the United States Constitution.

(7) Married and 16 years of age or over, or in the military.

(8) On the sidewalk abutting their residence or on the next door neighbor's property with the consent of the neighbor.

(d) *Enforcement.*

(1) Before taking any enforcement action under this section, a police officer shall attempt to ascertain the apparent offender's age and reason for being in the place. The officer shall not issue a citation or make an arrest under this section unless the officer reasonably believes that an offense has occurred and that, based upon the circumstances, the minor's responses and minor's conduct, no defense as provided in subsection (c) of this section is probably present.

(2) In addition to any other powers he/she may have, any law enforcement officer who arrests a minor for violating any of the provisions of section (b)(1) or (b)(2) is also hereby empowered to demand of the parent, guardian or other person having the care, custody or supervision of the minor that such parent, guardian or other person come and take the minor into custody. The law enforcement officer is also empowered to take the minor to a designated location where arrangements can be made for a parent, guardian or other appropriate party to take the minor into custody. Should there be a failure of the parent, guardian or other person to take custody of such minor, the officer may then be empowered to take the minor home.

(e) Each violation of the provisions of sections (b)(1), (b)(2), (b)(3) and (b)(4) shall constitute a separate offense.

(f) A person convicted of a violation of any provision of this chapter shall be guilty of a class 1 misdemeanor punishable as set forth in § 1-7, Tempe City Code. This offense is designated an incorrigible offense for minors under the jurisdiction of the juvenile court.
(Code 1967, §§ 18-6.1—18-6.3, 18-7.1—18-7.3, 18-8.1; Ord. No. 93.43, 1-13-94; Ord. No. 95.17, 5-11-95)

Sec. 22-9. Disclosure of information to prospective buyers of single- or multiple-family residences, tenants and buyers of mobile homes, mobile home lots or mobile home parks.

(a) *Definitions.* For the purposes of this section, the following term, phrases, words and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number:

(1) *Buyer* means any person who purchases a newly constructed single- or multiple-family dwelling or any person who purchases a single- or multiple-family dwelling that has not been previously occupied since it was constructed. Any person who purchases a mobile home, a mobile home lot or, individually or in conjunction with others, purchases a mobile home park.

(2) *City* means the City of Tempe, a municipal corporation of the state, in its present incorporated form or in any later reorganized, consolidated, enlarged or reincorporated form.

(3) *Person* means any individual, corporation, partnership, company and any other form of multiple organization.

(4) *Seller* means any person who sells to a buyer a newly constructed single- or multiple-family dwelling or a single- or multiple-family dwelling that has not been previously occupied since it was constructed. Any person who sells to a buyer a mobile home, mobile home lot, mobile home park or mobile home subdivision, as defined in the Zoning and Development Code, Section 7-114.

(5) *Tenant* means any person who rents or leases, for a residence, a mobile home lot or a mobile home which is attached to a lot or is located in a mobile home park.

(6) *Landlord* means any person or corporation or partnership or other business entity who rents or leases a mobile home lot or a mobile home to any tenant for residential purposes.

(b) *Required information.* Every seller of a single or multiple-family residence located in the city that has not been previously occupied shall disclose information to any prospective buyer which shall specify the zoning classification of the property to be sold, the zoning classification of undeveloped land bordering the subdivision, that zoning classifications are subject to change, the school district the buyer's children will attend, which are also subject to change, the necessity for depressed lots, the nature of the water, sewer and garbage services provided by the city, the existence of neighborhood mailbox units, if the property is in the proximity of a proposed freeway, the nature of the residential development tax, the nonavailability of a product or service normally furnished by a public utility and other pertinent information which may be required by the city. In addition, if the residence is located in an overflight impacted area, as determined by the community development director, the statement shall disclose that the residence is in that area.

Every seller or landlord of a mobile home, mobile home lot or mobile home park located in the city shall disclose information to any prospective buyer or tenant which shall specify the zoning classification of the property to be sold or rented, the zoning classification of land bordering the property, that zoning classifications are subject to change, the nature, structure and standard of all utility services, if the property is in the proximity of a proposed freeway, and a statement of any present intention to change the use of the mobile home park within one year of tenant's moving into the park. If the residence is located in an overflight impacted area, as determined by the community development director, the statement shall disclose that the residence is in that area.

(c) *Form.* The required information shall be disclosed on a written form which shall be signed by all parties. The seller or landlord shall cause the form to be duly executed by the buyer, tenant, seller, landlord, broker, salesman and rental agent, if any, on or before the close of

escrow or upon signing of the lease or upon the tenant's moving into the mobile home or onto the mobile home lot, whichever occurs first.
(Code 1967, § 21-1.1; Ord. No. 744.2, 11-14-85; Ord. No. 97.20, 4-10-97; Ord. No. 2001.01, 7-26-01; Ord. No. 2004.42, 1-20-05; Ord. No. 2010.02, 2-4-10)

Sec. 22-10. Railroad speed limits.

(a) No person shall run upon any railroad, or any part thereof, any train, locomotive or engine in excess of the following designated speed limits within the following designated areas:

From the east city limits to the east intersection of Rural Road, any speed in excess of sixty (60) miles per hour; from the east intersection of Rural Road to the east intersection of College Avenue, any speed in excess of forty (40) miles per hour; from the east intersection of College Avenue to the south intersection of Thirteenth Street, any speed in excess of thirty (30) miles per hour from the south intersection of Thirteenth Street to the bridge across Salt River, any speed in excess of twenty (20) miles per hour.

(Code 1967, § 21-11)

Sec. 22-11. Unauthorized sale of motor vehicles on private property.

(a) It shall be unlawful for a person to park or place a motor vehicle, mobile home or trailer upon the real property of another for the purpose of sale or lease unless the real property owner has first obtained all required permits and licenses for the sale or lease of motor vehicles at that location, including, but not limited to, complying with all zoning requirements.

(b) The owner or person in lawful possession of any land, property or building may authorize the city to act as his agent for the purpose of complying with this section. Such application shall be made to the community development department and shall be accompanied by an application fee established by the city council (see Appendix A). The applicant shall authorize the city to post signs indicating that the sale or offer of sale of any new or used motor vehicle, mobile home or trailer is prohibited on the applicant's property together with information indicating any motor vehicle, mobile home or trailer in violation of this section may be towed away by the city.

(c) The police department shall either cite the violator or take charge of, remove and keep in custody any unoccupied motor vehicle, mobile home or trailer of any kind or description found violating any of the provisions of this section from and after posting of the signs specified in subsection (b) above. The police department may promulgate necessary and desirable rules and regulations to carry out the intent of this section.
(Ord. No. 86.09, 2-13-86; Ord. No. 97.20, 4-10-97; Ord. No. 2010.02, 2-4-10)

Sec. 22-12. Failure to provide information.

Any person who fails or refuses to provide evidence of his identity to a peace officer, when such officer has reasonable cause to believe the person has committed a violation of an ordinance of the city or any law of the state or United States, is guilty of misdemeanor.
(Ord. No. 86.48, 7-24-86)

Sec. 22-13. Urination, defecation in public place.

(a) It shall be unlawful for any person to urinate or defecate in, or upon any public or private property except in toilet facilities provided therefor.

(b) Any violation of this section shall be punishable as a petty offense, subject to a maximum penalty of three hundred dollars ($300) per violation.
(Ord. No. 92.39, 7-30-92)

Sec. 22-14. Possession of firearms, exceptions.

(a) For the purposes of this section:

1. "*Minor*" means a person who is under the age of eighteen (18) years.

2. "*Firearm*" means any loaded or unloaded pistol, revolver, rifle, shotgun or other weapon which will or is designed to or may readily be converted to expel a projectile by the action of an explosive or expanding gases, except that it does not include an air rifle, air pistol, BB gun or a firearm in permanently inoperable condition.

3. "*Written consent*" means written approval or permission to possess a firearm, which is on a form prescribed by the police department, signed by the child's parent or legal guardian and notarized, and which specifically describes the firearm as follows:

    a. Type;
    b. Manufacturer;
    c. Caliber; and
    d. Serial number.

(b) It shall be unlawful for a minor to possess any firearm within the city without the written consent of the child's parent or legal guardian. The original written consent form shall be carried by the minor any time the minor is in possession of a firearm outside the minor's residence.

(c) Any firearm possessed by a minor in violation of this section shall be subject to forfeiture in the same manner as authorized by Title 13, Chapter 39, Arizona Revised Statutes.
(Ord. No. 93.06, 2-11-93)

State law reference—Minors prohibited from carrying firearms, exceptions; A.R.S. § 13-3111.

Sec. 22-15. Breastfeeding.

A mother may breastfeed her child in all places open to the public where the mother and child are otherwise allowed to be.
(Ord. No. 2005.95, 12-1-05)

Sec. 22-16. Sale of products containing pseudoephedrine.

(a) *Definitions.* In this section, unless the context otherwise requires:

(1) *Pseudoephedrine product* means any product containing ephedrine or pseudoephedrine and includes any compound, mixture or preparation that contains any detectable quantity of ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine or their salts, optical isomers or salts of optical isomers. Product packaging that lists ephedrine, pseudoephedrine, norpseudoephedrine or phenylpropanolamine as an active ingredient shall constitute prima facie evidence that the product is a pseudoephedrine product.

(2) *Retail establishment* means any place of business that offers any pseudoephedrine product for sale at retail.

(b) The operator of a retail establishment shall keep all products containing pseudoephedrine behind a store counter or otherwise in a manner that is inaccessible to customers without the assistance of the operator or an employee of the establishment.

(c) A person making a retail sale of a product containing pseudoephedrine shall require a government-issued, photo identification from the purchaser and shall record the purchaser's name, date of birth, quantity of pseudoephedrine product purchased, transaction date and the initials of the seller.

(d) The information required to be obtained by subsection (c) will be retained by the retail establishment for a period of ninety (90) days, and will be considered a confidential document that will only be available to the operator of the retail establishment, and shall be available to the City of Tempe police department officers, Arizona Department of Public Safety officers, Maricopa County Sheriff's Department officers and other law enforcement officers.

(e) A violation of this section is a class 1 misdemeanor.
(Ord. No. 2006.14, 2-16-06)

Sec. 22-17. Sexual encounter centers.

(a) It is unlawful for any person to own, manage, operate or provide a sexual encounter center as defined in this section.

(b) *Sexual encounter center* means a non-medical business, which offers for any form of consideration:

(1) Activities between persons when one or more of the persons is in a "state of nudity" as defined in § 16A-113; or

(2) The matching and/or exchanging of persons for "specified sexual activities" as defined in § 16A-113.

(c) A violation of this section is a class 1 misdemeanor.

(Ord. No. 2007.07, 2-1-07)

Secs. 22-18—22-39. Reserved.

ARTICLE II. SMOKING POLLUTION CONTROL

DIVISION 1. REGULATION OF SMOKING

Sec. 22-40. Purpose.

(a) The smoking of tobacco or any plant is a positive danger to the health and a material annoyance, inconvenience, discomfort and health hazard to those who are present in confined spaces.

(b) Electronic smoking devices, which first entered the United States market in 2007, are electronic inhalers meant to simulate cigarette smoking. Electronic smoking devices use a heating element that vaporizes a liquid solution. Many electronic smoking devices release nicotine, a highly addictive substance, while some merely release flavored vapor. They are designed to mimic traditional smoking implements in their use and appearance. Although the long-term effects of electronic smoking devices may require further study, the United States Food and Drug Administration has found that some devices contain toxins and carcinogens and has expressed concerns about their safety. Use of electronic smoking devices, particularly in places where smoking is prohibited, may interfere with smokers' attempts to quit by making it easier for them to maintain their nicotine addiction. Children and youth who experiment with electronic smoking devices may become addicted to nicotine and ultimately switch to smoking cigarettes.

(c) Therefore, in order to serve the public health, safety and welfare, the declared purpose of this article is to restrict smoking within enclosed places, in particular, public places and places of employment.
(Ord. No. 86.06, 1-30-86; Ord. No. O2014.33, 7-31-14)

Sec. 22-41. Definitions.

The following definitions shall apply in the interpretation and enforcement of this article:

(a) *Smoke or smoking,* as defined in this article, includes the:

(1) Carrying or placing of a lighted cigarette or lighted cigar or lighted pipe or any other lighted smoking equipment in one's mouth for the purpose of inhaling and exhaling smoke or blowing smoke rings;

(2) Placing of a lighted cigarette or lighted cigar or lighted pipe or any other lighted smoking equipment in an ashtray or other receptacle, and allowing smoke to diffuse in the air;

(3) Carrying or placing of a lighted cigarette or lighted cigar or lighted pipe or any other lighted smoking equipment in one's hands or any appendage or devices and allowing smoke to diffuse in the air; or

(4) Using an electronic smoking device designed for the purpose of inhaling and exhaling aerosol or vapor.

(b) *Enclosed public place* means any area closed in by a roof and walls with openings for ingress and egress which is available to and customarily used by the public. Enclosed public places governed by this article shall include, but not be limited to, public areas of grocery stores, waiting rooms, public and private schools, doctors' office buildings, community centers, child care centers, public restrooms, all indoor facilities and any public places already regulated by A.R.S. § 36-601.01 and restaurants/cafeterias, bars, sports bars, bowling alleys and billiard halls. A private residence is not a "public place".

(c) *Bar* shall mean an area devoted primarily to alcoholic beverage service to which food service is only incidental.

(d) *Employee* means any person who is employed by any employer for direct or indirect monetary wages or profit.

(e) *Employer* means any person or entity employing the services of an employee.

(f) *Place of employment* means any enclosed area under the control of a private or public employer. A private residence is not a "place of employment".

(g) *Designated smoking area* means any area outdoors which is outside of any enclosed public place and removed from building entrances and exits. Any designated smoking area must be so situated as to allow nonsmoking individuals to conduct normal activity in a smoke-free environment.

(h) *Employee work area* means any areas within a place of employment, which share a common ventilation, heating or air conditioning system.

(i) *Electronic smoking device or electronic cigarette* means any product containing or delivering nicotine or any other similar substance intended for human consumption that can be used by a person to simulate smoking through inhalation of vapor or aerosol from the product. The term includes any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, or vape pen, or under any other product name or descriptor.
(Ord. No. 86.06, 1-30-86; Ord. No. 88.16, 2-25-88; Ord. No. 88.18, 2-25-88; Ord. No. 88.28, § 1, 3-31-88; Proposition 200, 5-21-02; Ord. No. O2014.33, 7-31-14)

Sec. 22-42. Prohibition and regulation of smoking in city-owned facilities.

(a) All enclosed public places, places of employment and employee work areas owned, leased or operated by the city shall be subject to this article.

(b) Smoking is prohibited in all vehicles and enclosed public places, places of employment and employee work areas owned, leased or operated by the city.
(Ord. No. 86.06, 1-30-86; Ord. No. 94.02, 2-10-94)

Sec. 22-43. Prohibition of smoking in enclosed public places.

(a) No person shall smoke in any enclosed public place or place of employment except outdoors in designated smoking areas.

(b) No owner, manager, operator, employer or other person in control of any place regulated by this article shall allow smoking in any enclosed public place or place of employment except outdoors in designated smoking areas.
(Ord. No. 86.06, 1-30-86; Proposition 200, 5-21-02; Ord. No. 2002.35, 8-8-02)

Sec. 22-44. Regulation of smoking in places of employment.

(a) Within ninety (90) days after the effective date of this article, each employer in each place of employment within the city shall adopt, implement and maintain a smoking policy containing at a minimum the following requirements:

(1) Prohibition of smoking in all employee work areas within the city.

(2) Prohibition of smoking in employer conference and meeting rooms, classrooms, auditoriums, restrooms, waiting areas, medical facilities, hallways, stairways and elevators.

(b) The employer shall announce its smoking policy within ninety (90) days after the effective date of this article to all its employees working in work areas within the city.

(c) The provisions of this section shall not apply to those areas listed in § 22-45.

(d) No employee shall be terminated or subject to disciplinary action solely as a result of his complaint about smoking or nonsmoking in the workplace.
(Ord. No. 86.06, 1-30-86; Ord. No. 88.17, 2-25-88; Ord. No. 88.19, 2-25-88; Ord. No. 88.20, 2-25-88; Ord. No. 88.28, § 2, 3-31-88; Ord. No. 88.36, 6-9-88; Ord. No. 94.02, 2-10-94; Proposition 200, 5-21-02)

Sec. 22-45. Where smoking is not regulated.

Notwithstanding any other provisions of this article to the contrary, the following area shall not be subject to the smoking restrictions of this article:

(1) Private residences;

(2) Hotel and motel rooms rented to guests, which are on a separately partitioned ventilation system;

(3) Retail stores that deal exclusively in the sale of tobacco products and smoking paraphernalia, as long as separately partitioned and on a separate ventilation system;

(4) On-stage smoking as part of a stage production, ballet or similar exhibition;

(5) Conference/meeting rooms and private meeting rooms while these places are being used exclusively for private functions, as long as separately partitioned and separately ventilated; and

(6) Private clubs and recreation facilities, which do not serve the public or charge the public for services.

(Ord, No. 86.06, 1-30-86; Proposition 200, 5-21-02)

Sec. 22-46. Posting requirements.

"No Smoking" signs, the international "No Smoking" symbol or "Designated Smoking Area" signs shall be clearly and conspicuously posted by the owner, operator, manager, employer or other person in control of every place where smoking is regulated by this article.
(Ord. No. 86.06, 1-30-86; Ord. No. 22-46, 8-8-02; Ord. No. 2002.35, 8-8-02)

Sec. 22-47. Responsibility of owners, etc

In addition to any other requirements imposed by this article, an owner, manager, operator, employer or other person in control of any place regulated by this article shall:

(1) Properly identify all shared enclosed indoor airspace as non-smoking; and

(2) Protect entrances and exits from outdoor drifting environmental tobacco or electronic smoking device smoke.
(Ord. No. 86.06, 1-30-86; Proposition 200, 5-21-02; Ord. No. 2002.35, 8-8-02; Ord. No. O2014.33, 7-31-14)

Sec. 22-48. Repealed.
(Ord. No. 88.21, 2-25-88; Proposition 200, 5-21-02)

Sec. 22-49. Repealed.
(Ord. No. 88.21, 2-25-88; Proposition 200, 5-21-02)

Sec. 22-50. Prohibited in Tempe Diablo Stadium.

Smoking is prohibited in Tempe Diablo Stadium.
(Ord. No. 94.02, 2-10-94; Proposition 200, 5-21-02)

DIVISION 2. REGULATION OF TOBACCO PRODUCTS

Sec. 22-51. Definitions.

For the purpose of this division, the following definitions shall apply:

(1) *Control device* means electronic or mechanical control which causes the contents of a vending machine to be distributed;

(2) *Distribution* means to give, sell, deliver, dispense, issue, offer to give, sell, deliver, dispense or issue, or cause or hire any person to give, sell, deliver, dispense, issue or offer to give, sell, deliver, dispense or issue;

(3) *Minor* means any person under the age of eighteen (18) years;

(4) *Person* means any natural person, corporation, partnership, firm, organization or other legal entity;

(5) *Public place* means any area to which the public is invited or permitted;

(6) *Tobacco product* means any tobacco cigarette, cigar, pipe tobacco, smokeless tobacco, snuff, or any other form of tobacco which may be utilized for smoking, chewing, inhalation or other manner of ingestion; and

(7) *Vending machine* means any mechanical, electronic or other similar device which dispenses tobacco products.

(Ord. No. 93.41, 12-9-93; Ord. No. 99.15, 7-22-99)

Sec. 22-52. Regulation of tobacco products through vending machines.

No person shall permit the distribution of tobacco products through the operation of a vending machine in a public place.

(Ord. No. 93.41, 12-9-93; Ord. No. 99.15, 7-22-99; Proposition 200, 5-21-02)

Sec. 22-53. Storage and display of tobacco products.

No person who owns, conducts, operates or maintains a business where tobacco products are sold, nor any person who sells or offers for sale tobacco products, shall store or display, or cause to be stored or displayed, such tobacco products in an area or manner that is accessible to the public without employee assistance.

(Ord. No. 99.15, 7-22-99; Proposition 200, 5-21-02; Ord. No. 2002.35, 8-8-02)

Sec. 22-54. Civil fines and penalties imposed.

(a) The civil fine/penalty for violating the provisions of §§ 22-43(a), 22-46 or 22-47(1) shall not exceed fifty dollars ($50) for the first offense and seventy-five dollars ($75) for each successive offense.

(b) The civil fine/penalty for violating the provisions of §§ 22-42, 22-43(b), 22-44, 22-47(2), 22-52 or 22-53 is one hundred dollars ($100) for the first offense, five hundred dollars ($500) for the second and third offense, and a minimum fine of five hundred dollars ($500) or a maximum fine of two thousand five hundred dollars ($2,500) if more than three (3) violations occur in any consecutive twelve (12) month period.

(c) By enforcing this article, the city undertakes only to promote the general welfare and health of the community. It does not assume, nor does it impose on its officers and employees, an obligation for breach of which it is liable in money damages to any person claiming injury from such breach.

(Ord. No. 2002.35, 8-8-02)

Secs. 22-55—22-59. Reserved.

ARTICLE III. NEIGHBORHOOD ENHANCEMENT AND CLEANUP

Sec. 22-60. Repealed.
(Ord. No. 86.11, 2-27-86; Ord. No. 88.23, § 1, 4-14-88; Ord. No. 89.66, §§ 1, 2, 1-11-90; Ord. No. 97.48, 12-18-97; Ord. No. 99.35, 9-30-99; Ord. No. 99.44, 12-16-99)

Sec. 22-61. Repealed.
(Ord. No. 86.11, 2-27-86; Ord. No. 88.23, § 2, 4-14-88; Ord. No. 89.66, § 3, 1-11-90; Ord. No. 99.35, 9-30-99)

Sec. 22-62. Repealed.
(Ord. No. 86.11, 2-27-86; Ord. No. 99.35, 9-30-99)

Sec. 22-63. Repealed.
(Ord. No. 86.11, 2-27-86; Ord. No. 97.20, 4-10-97; Ord. No. 99.35, 9-30-99)

Sec. 22-64. Repealed.
(Ord. No. 86.11, 2-27-86; Ord. No. 99.35, 9-30-99)

Sec. 22-65. Repealed.
(Ord. No. 86.11, 2-27-86; Ord. No. 99.35, 9-30-99)

Sec. 22-66. Repealed.
(Ord. No. 86.11, 2-27-86; Ord. No. 99.35, 9-30-99)

Sec. 22-67. Repealed.
(Ord. No. 86.11, 2-27-86; Ord. No. 93.32, 9-9-93; Ord. No. 96.09, 6-20-96; Ord. No. 99.35, 9-30-99)

Sec. 22-68. Repealed
(Ord. No. 86.11, 2-27-86; Ord. No. 99.35, 9-30-99)

Sec. 22-69. Repealed.
(Ord. No. 86.11, 2-27-86; Ord. No. 99.35, 9-30-99)

Sec. 22-70. Repealed.
(Ord. No. 86.11, 2-27-86; Ord. No. 99.35, 9-30-99)

Secs. 22-71—22-74. Reserved.

ARTICLE IV. ALARM REGULATIONS

Sec. 22-75. Definitions.

For the purpose of this article, the following terms shall have the meanings respectively ascribed to them in this section unless the context clearly requires otherwise:

(1) *Alarm* means any mechanical or electrical device, system or service which is used to detect unauthorized entry into buildings or onto premises, or warn or alert others of an emergency or fire or of the commission of an unlawful act within the buildings or on the premises, to which the city is expected to respond;

(2) *Alarm business* means any person who sells, leases, maintains, services, repairs, alters, replaces, moves or installs any alarm, or causes any of the above to be done with regard to any alarm, in or on any building, structure or facility;

(3) *Alarm user* means any person who leases, rents, purchases or uses any alarm whether or not the alarm is monitored by an alarm business or person other than the user;

(4) *Automatic dialing device* means a device which is interconnected to a telephone line and is programmed to select a predetermined telephone number and transmit by voice methods or code signal an emergency message indicating a need for emergency response;

(5) *City* means the police and fire medical rescue departments of the City of Tempe;

(6) *False alarm* means the giving, signalling or transmission to the city, by telephone, word or otherwise, that an emergency, unauthorized entry, unlawful act, fire or other emergency exists when such fire, entry, act or emergency does not in fact exist. False alarm does not include an alarm signal caused by extraordinary circumstances not reasonably subject to control by the alarm user or an alarm business;

(7) *Owner* means the owner of record of the premises where an alarm or alarm system is located or where a false alarm occurred as shown by the records in the office of the county assessor; and

(8) *Person* means any person, firm, association, organization, partnership, business trust, corporation or company, or governmental entity except the city or any of its offices or agencies.
(Ord. No. 91.27, 9-12-91; Ord. No. O2014.14, 3-20-14)

Sec. 22-76. Permits for alarms required, confidentiality.

(a) Every alarm user shall obtain a permit from the city for an alarm within thirty (30) days after the alarm is used or becomes operational. Application for permit shall be on forms prescribed by the city requiring identification of the alarm user and the owner of the premises where the alarm is located, and such other information about the alarm as may be required. The application shall be accompanied by an initial permit fee in such sum as set by the city council. The permit shall expire one year after date of issue and each year thereafter. An alarm user shall renew the alarm permit annually, subject to a renewal fee as set by the city council. An alarm permit which is not renewed by the expiration date shall be subject to a delinquent renewal fee

established by the city council. The permit issued by the city shall be physically on the premises using the alarm and shall be available for inspection by the city. Permits are not transferable from one user to another user or from one address to another address.

(b) If the residential alarm user is over the age of sixty-five (65) and is the primary resident of the residence, a user's permit may be obtained from the alarm coordinator without the payment of either an initial permit fee or any subsequent renewal fees. This exemption shall not apply to fees due to failure to timely obtain or renew an alarm permit, or any service fee due to excessive false alarms.

(c) The alarm user or permittee must notify the alarm coordinator of the Tempe police department of the name, address and telephone number of the primary person and at least one alternate to be notified in case the alarm is activated, unless the alarm system is not audible and is monitored at a remote location. The alarm user or permittee is required to notify the city alarm coordinator of any change in the information contained in the application or permit, and if the alarm is no longer being used, within ten (10) days after the effective date of such change or cessation in use. Failure to make such notification shall constitute a violation of this article, punishable as provided herein.

(d) It is unlawful and a violation of this code for any alarm user or the owner of any premises where an alarm is located to operate or use an alarm, or allow operation or use of an alarm, without a permit as required herein. An alarm user who does not obtain a permit within thirty (30) days after the alarm is used or becomes operational shall be subject to a delinquent permit fee in addition to any other penalties under this code.

(e) Application and permit information acquired in compliance with this article shall be considered confidential as a privacy right of the applicant and permittee. Any violation of confidentiality, except as required by law, shall be deemed a violation of this article.
(Ord. No. 91.27, 9-12-91; Ord. No. 99.18, 7-22-99)

Cross reference—See Appendix A of this code for applicable service fees and charges.

Sec. 22-77. False alarms committed knowingly prohibited

It is unlawful for any person to knowingly report, turn in or make, or knowingly cause any of such acts resulting in, a false alarm.
(Ord. No. 91.27, 9-12-91; Ord. No. 93.24, 8-26-93)

Editor's Note—Ord. No. 93.24 renumbered subsections (a) and (b) of this section as Sec. 22-77.1(a), (b) and (c).

Sec. 22-77.1. Review of false alarms, service fee for excessive false alarms.

(a) When any false alarm occurs by an alarm in one permit year, upon request by the city, the alarm user or owner shall submit to the city a letter specifying what corrective action has been taken to prevent future false alarms.

(b) *Residential.* A third and any subsequent false alarm occurring by any permitted alarm user in one permit year is an excessive false alarm and shall subject the owner or user, individually or jointly, to an excessive false alarm service fee for the city's response to such excessive false alarm. A schedule of such service fees for responding to an excessive false alarm shall be adopted by council resolution.

(c) *Businesses.* A second and any subsequent false alarm occurring by any permitted alarm user in one permit year is an excessive false alarm and shall subject the owner or user, individually or jointly, to an excessive false alarm service fee for the city's response to such excessive false alarm. A schedule of such service fees for responding to an excessive false alarm shall be adopted by council resolution.

(d) Non-permitted alarm users who incur a false alarm shall be assigned an alarm permit by the alarm coordinator and charged the permit fee described in § 22-76(a). The non-permitted alarm user shall immediately provide the alarm coordinator with any and all necessary responsible party information as part of the assigned permit. Alarm users who fail to provide necessary responsible party information and incur a second and any subsequent false alarm will be assessed an excessive false alarm service fee for the city's response to each subsequent excessive false alarm. A schedule of such service fees for responding to an excessive false alarm shall be adopted by council resolution. Non-permitted alarm users who provide necessary responsible party information and incur a second and any subsequent false alarm will be assessed the same excessive false alarm service fee as permitted alarm users in subsection (b) of this section.

(e) The decision on whether a false alarm or excessive false alarm has occurred shall be made by the alarm coordinator of the city.

(Ord. No. 93.24, 8-26-93, Ord. No. 99.18, 7-22-99; Ord. No. 2000.10, 3-16-00; Ord. No. 2008.62, 11-6-08)

Cross reference—See Appendix A of this code on applicable fees and charges.

Sec. 22-77.2. Appeals of excessive alarm determinations and fees.

(a) Any party aggrieved by a decision of the alarm coordinator made pursuant to §§ 22-77.1 or 22-78(b) on excessive alarms and service fees may, within ten (10) days after receipt of notice of the decision, appeal to a hearing officer appointed by the city by filing a written appeal with the alarm coordinator.

(b) The request for an appeal shall set forth the specific objections to the decision of the alarm coordinator which forms the basis of the appeal.

(c) The hearing officer shall set a time and place for the hearing as soon as practicable.

(d) The hearing process shall be conducted in an informal manner. The hearing officer shall not be bound by the technical rules of evidence in the conduct of such hearings. All parties to the hearing shall have the right to present evidence in support of or in opposition to the decision of the alarm coordinator.

(e) The decision of the hearing officer shall be based upon the evidence presented and it shall:

(1) Affirm the decision of the alarm coordinator in which case an excessive alarm service fee imposed pursuant to this article shall be sustained; or

(2) Reverse or modify the decision of the alarm coordinator, in whole or in part, in which case no fee or a modified fee shall be imposed.

(f) When the decision of the alarm coordinator is affirmed in appeal, or a modified fee is imposed, the hearing officer may designate whether the owner or user is solely responsible for the payment of the fee.
(Ord. No. 93.24, 8-26-93)

Sec. 22-77.3. Service fees levied pursuant to this article, unlawful to operate system when delinquent.

Service fees levied pursuant to this article for excessive false alarms or excessive audible alarms are due and payable on the due date indicated on the service fee billing and are delinquent if not paid by the due date. Service fees not paid by the due date will be subject to interest and costs of collection and may result in revocation of the applicable alarm permit as provided in § 22-81 of this code. When a service fee becomes delinquent, operation of the alarm system shall be immediately discontinued. It is unlawful to operate an alarm system on any premises when a service fee for such system has become delinquent.
(Ord. No. 93.24, 8-26-93)

Sec. 22-78. Audible alarms, sound emission cutoff feature, deactivation within 20 minutes, service fee.

(a) From and after January 1, 1992, an alarm which emits an audible sound which can be heard outside an alarm user's building, structure or facility shall be equipped with an automatic sound emission cutoff feature which will stop the emission of sound within twenty (20) minutes after the alarm is activated. It is unlawful for an alarm business to sell, lease, install, replace or move an audible alarm which does not comply with this subsection.

(b) An audible alarm which is audible in excess of twenty (20) minutes shall subject the alarm owner or user, individually or jointly, to an excessive audible alarm service fee for the city's response to such an audible alarm. The excessive audible alarm service fee shall be established by resolution of the city council.

(c) This section shall not apply to an audible fire alarm which meets the requirements of or is otherwise approved by the city pursuant to the city's fire or building codes.
(Ord. No. 91.27, 9-12-91; Ord. No. 93.24, 8-26-93)

Cross reference--See Appendix A of this code for applicable service fees and charges.

Sec. 22-79. Automatic dialing device prohibited.

Unless authorized by the city, no person shall use or cause to be used any automatic dialing device or telephone attachment that directly or indirectly causes a public primary telephone trunk of the city to be utilized. Such an automatic dialing device programmed to select a public primary telephone trunk line of the city is unlawful and shall be disconnected.
(Ord. No. 91.27, 9-12-91)

Sec. 22-80. Businesses to provide user instructions, notice of permit requirement.

Any alarm business shall:

(1) Furnish the alarm user with instructions that provide information to enable the user to operate the alarm properly and to obtain service for the alarm at any time;

(2) Inform each alarm user of the requirements of this article and the need to obtain an alarm permit.
(Ord. No. 91.27, 9-12-91)

Sec. 22-81. Fine and penalties; revocation of permit.

(a) Any person violating §§ 22-76, 22-77, 22-78(a), 22-79 and 22-80 of this article is subject to punishment as provided in § 1-7 of the Tempe City Code.

(b) The permit issued pursuant to this article for an alarm system may be revoked for any violation of this article. An alarm permit which is revoked for delinquent service fees shall become effective without hearing or other proceedings ten (10) days following the date of the notice issued by the alarm coordinator notifying the permittee of such revocation. An alarm user whose alarm permit has been revoked may have it reinstated by paying all overdue assessments, submitting a corrective report detailing the corrective action taken with proof of inspection for malfunctions attached and paying a reinstatement fee established by resolution of the city council. For any revocation other than for delinquent service fees, the alarm permit revocation proceedings shall be conducted by a hearing officer appointed by the city.

(c) Repealed in Ord. No. 93.24.
(Ord. No. 91.27, 9-12-91; Ord. No. 93.24, 8-26-93; Ord. No. 99.18, 7-22-99)

Sec. 22-82. Administration and enforcement.

This article shall be enforced by the city's alarm coordinator who shall be the police chief or his designee.
(Ord. No. 91.27, 9-12-91)

Secs. 22-83—22-90. Reserved.

ARTICLE V. FAIR HOUSING

Sec. 22-91. Declaration of policy.

(a) It is hereby declared that the civil rights of the people of the city shall be free from discrimination, and no person(s) shall be denied or be excluded from participation in the sale, leasing, rental, or other disposition of housing or related facilities (including land) because of race, color, religion, gender, gender identity, sexual orientation, national origin, familial status (includes children under the age of eighteen (18) living with parents or legal custodians; pregnant women and people securing custody of children under eighteen (18)), age, disability, or united states military veteran status. This policy also prohibits discrimination by banks, loan associations, insurance companies and associations, whose business consists of providing financial assistance to persons for the purpose of purchasing, construction, improving, repairing, or maintaining a dwelling. The only exemptions to this requirement shall be:

(1) A dwelling containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner occupies one such living quarters as his/her residence.

(2) Religious organizations, expressive associations and private clubs, may limit sales, rental, or occupancy of noncommercial units to their members.

(b) Additionally, no otherwise qualified person(s) in the city shall, on the basis of age or disability, be excluded from participation, or be subjected to discrimination under any program or activity receiving federal financial assistance.

(Ord. No. 87.10, 4-23-87; Ord. No. 95.12, 3-30-95; Ord. No. O2014.20, 4-10-14)

Cross reference—See Human Relations, Ch. 2., Article VIII.

Sec. 22-92. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Discriminate or discrimination means to exclude individuals from an opportunity or participation in any activity because of race, color, gender, gender identity, sexual orientation, religion, national origin, familial status, age, disability, or United States military veteran status; and occurs whenever similarly situated individuals of a different group are accorded different and unequal treatment in the context of a similar situation.

Housing means any building, structure or facility which is occupied as, or designed, or intended for occupancy as a residence, home or sleeping place; and any vacant land which is available for sale or lease for the construction of any building, structure or facility.

Owner means to include any manager, agent, representative, or other person having the authority to sell, rent or lease housing.

Real estate broker or real estate salesperson means a person licensed or not, who, for a fee or other considerations, receives or collects the same, lists, sells, purchases, rents or leases any housing, or negotiates such activities, and who also may be responsible for arranging a loan or securing a mortgage; or an individual acting in the behalf of any other person in these matters.
(Ord. No. 87.10, 4-23-87; Ord. No. 95.12, 3-30-95; Ord. No. O2014.20, 4-10-14)

Sec. 22-93. Prohibited actions.

It shall be unlawful for any person, including but not limited to owners, lessees, agents, real estate brokers, real estate salespersons, trustees, mortgagees, financial institutions, title companies, and insurance companies:

(1) To discriminate against any person in the sale, lease, rental or any other condition involving housing; further to discriminate in the extension of loans, credit, insurance, or any other services related to the financing or transfer of interest of any dwelling.

(2) To refuse to sell or rent after the making of a bona fide offer, because of race, color, religion, gender, gender identity, sexual orientation, national origin, familial status, disability, or united states military veteran status.

(3) To discriminate in the terms, conditions, or privileges of sale or rental of a dwelling.

(4) To print, publish, or advertise sale or rental of a dwelling which indicates preference, limitations, or discrimination, based on race, color, religion, sex, national origin, familial status or handicap.

(5) To represent to any person that a house is not available for inspection, sale, or rental, when such a house is, in fact, available because of race, color, religion, gender, gender identity, sexual orientation, national origin, familial status, disability, or United States military veteran status.

(6) To induce, or attempt to induce, for profit, any person to sell or rent a house by representation regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, gender, gender identity, sexual orientation, national origin, familial status, disability, or United States military veteran status.

(7) To aid, abet, incite, or coerce, the doing of any of the acts prohibited under this chapter.

(Ord. No. 87.10, 4-23-87; Ord. No. 95.12, 3-30-95; Ord. No. O2014.20, 4-10-14)

C**ross reference—See Human Relations, Ch. 2., Article VIII**.

Sec. 22-94. Administration; enforcement.

(a) The fair housing officer or his authorized agent is designated as administrator and enforcing officer of this chapter.

(b) All complaints alleging violations of § 22-93 of this code shall be in writing and filed with the fair housing officer within one hundred eighty (180) days from the date of violation.

(c) Violations of § 22-93 are not subject to the penalties in § 1-7 of this code.
(Ord. 87.10, 4-23-87; Ord. No. 95.12, 3-30-95)

Secs. 22-95—22-99. Reserved.

ARTICLE VI. GRAFFITI VANDALISM

Sec. 22-100. Purpose and intent.

The purpose of this article is to provide a program for abatement of graffiti from public and private property to reduce blight and deterioration within the city, protect public safety and to expedite removal of graffiti from structures on both public and private property.
(Ord. No. 97.66, 12-11-97)

Sec. 22-101. Definitions.

For purposes of this article, the following words and terms shall have the meaning ascribed thereto:

Aerosol paint container means any aerosol container which is adapted or made for the purpose of spraying paint.

Broad tip marker means any marker or similar implement which has a writing surface which is one-half (1/2) of an inch or greater and containing anything other than a solution which can be removed with water after the solution dries.

Graffiti means a drawing or inscribing a message, slogan, sign or symbol or mark of any type that is made on any public or private building, structure or surface, and that is made without permission of the owner.

Graffiti implement means an aerosol paint container, broad tip marker, paint stick, graffiti stick or bleeder.

Paint stick, graffiti stick or bleeder means an implement containing paint, wax, epoxy or other similar substance.

Responsible party means an owner, occupant, lessor, lessee, manager, licensee or other person having the right to control such property.
(Ord. No. 97.66, 12-11-97)

Sec. 22-102. Possession of graffiti implements prohibited.

(a) No person shall knowingly possess any graffiti implement with the intent to use the implement for the purpose of committing criminal damage.

(b) Violation of this section is a class 1 misdemeanor.
(Ord. No. 97.66, 12-11-97)

Sec. 22-103. Limiting access to graffiti implements.

(a) No person other than a parent or legal guardian shall sell, exchange, give, loan, or otherwise furnish, or cause or permit to be exchanged, given, loaned, or otherwise furnished, any graffiti implement to any person under the age of eighteen (18) years.

(b) Evidence that a person, his or her employee, or agent demanded and was shown acceptable evidence of majority and acted upon such evidence in a transaction or sale shall be a defense to any prosecution under this section. Acceptable evidence of majority shall include, but is not limited to, driver's license, state-issued identification or military identification.

(c) This section does not apply to the transfer of graffiti implements from parent to child, guardian to ward, employer to employee, teacher to student or in any other similar relationship when such transfer is for a lawful purpose.

(d) Violation of this section is a class 1 misdemeanor.
(Ord. No. 97.66, 12-11-97)

Sec. 22-104. Storage and display of graffiti implements.

(a) No person who owns, conducts, operates or manages a business, where aerosol paint containers or broad tip markers are sold, nor any person who sells or offers for sale aerosol paint containers or broad tip markers, shall store or display, or cause to be stored or displayed, such aerosol spray paint containers and broad tip markers in an area that is accessible to the public without employee assistance in the regular course of business pending legal sale or other disposition.

(b) Nothing herein shall preclude the storage or display of aerosol paint containers and broad tip markers in an area viewable by the public so long as such items are not accessible to the public without employee assistance.

(c) Violation of this section is a civil offense, subject to a fine of not less than five hundred dollars ($500).
(Ord. No. 97.66, 12-11-97)

Sec. 22-105. Graffiti prohibition and removal.

(a) *Graffiti prohibited.* All sidewalks, walls, buildings, fences, signs, and other structures or surfaces shall be kept free from graffiti when the graffiti is visible from the street or other public or private property.

(b) *Notice of violation.* If it is determined by the city that graffiti exists on property in violation of this article, the city shall, in writing, notify the responsible party with a notice of violation. The notice may be served by certified mail, personal service, or by posting the subject property and publishing the notice in the official city newspaper.

(c) *Contents of notice of violation*. The notice of violation shall identify the property in violation, shall generally describe the location of the graffiti, and shall direct that the graffiti be abated within ten (10) days of receipt of the notice. The notice shall state that in the event the responsible party fails to abate the graffiti within the time period specified in the notice of violation, the city shall abate the graffiti and may bill the responsible party for the costs. The notice shall state that the responsible party may appeal the notice by filing a written notice of appeal with the city clerk within the same time period given to abate the graffiti. The effective date of the notice of violation shall be the date received if delivered in person or sent by certified mail, or the date of first publication, if the alternate method of service is used.

(d) *City's authority to abate*. If the responsible party fails to abate the graffiti as required by the notice of violation, the city may proceed to abate the graffiti and may bill the responsible party for the costs thereof. The city or its authorized private contractor is expressly authorized to enter private property and abate graffiti thereon in accordance with this section. The police department shall assist in the enforcement of this ordinance.
(Ord. No. 97.66, 12-11-97)

Secs. 22-106—22-109. Reserved.

ARTICLE VII. RENTAL HOUSING CODE[1]

DIVISION 1. GENERALLY

Sec. 22-110. Repealed.
(Ord. No. 98.01, 1-8-98; Ord. No. 2002.06, 5-30-02)

Sec. 22-111. Repealed.
(Ord. No. 98.01, 1-8-98; Ord. No. 2002.06, 5-30-02)

Sec. 22-112. Repealed.
(Ord. No. 98.01, 1-8-98; Ord. No. 2001.17, 7-26-01; Ord. No. 2002.06, 5-30-02)

Secs. 22-113—22-119. Reserved.

DIVISION 2. RENTAL HOUSING STANDARDS

Sec. 22-120. Repealed.
(Ord. No. 98.01, 1-8-98; Ord. No. 2002.06, 5-30-02)

Sec. 22-121. Repealed.
(Ord. No. 98.01, 1-8-98; Ord. No. 2002.06, 5-30-02)

Sec. 22-122. Repealed.
(Ord. No. 98.01, 1-8-98; Ord. No. 2002.06, 5-30-02)

Sec. 22-123. Repealed.
(Ord. No. 98.01, 1-8-98; Ord. No. 2002.06, 5-30-02)

Sec. 22-124. Repealed.
(Ord. No. 98.01, 1-8-98; Ord. No. 2002.06, 5-30-02)

Sec. 22-125. Repealed.
(Ord. No. 98.01, 1-8-98; Ord. No. 2002.06, 5-30-02)

Sec. 22-126. Repealed.
(Ord. No. 98.01, 1-8-98; Ord. No. 2002.06, 5-30-02)

Sec. 22-127. Repealed.
(Ord. No. 98.01, 1-8-98; Ord. No. 2002.06, 5-30-02)

Secs. 22-128—22-139. Reserved.

[1]**Editor's Note—A**rticle VII, §§ 22-110 through 22-160 were repealed and incorporated into Ch. 21, Nuisances and property enhancement.

DIVISION 3. ADMINISTRATION AND ENFORCEMENT

Sec. 22-140. Repealed.
(Ord. No. 98.01, 1-8-98; Ord. No. 2002.06, 5-30-02)

Sec. 22-141. Repealed.
(Ord. No. 98.01, 1-8-98; Ord. No. 2002.06, 5-30-02)

Sec. 22-142. Repealed.
(Ord. No. 98.01, 1-8-98; Ord. No. 2002.06, 5-30-02)

Sec. 22-143. Repealed.
(Ord. No. 98.01, 1-8-98; Ord. No. 2002.06, 5-30-02)

Sec. 22-144. Repealed.
(Ord. No. 98.01, 1-8-98; Ord. No. 2002.06, 5-30-02)

Sec. 22-145. Repealed.
(Ord. No. 98.01, 1-8-98; Ord. No. 2002.06, 5-30-02)

Sec. 22-146. Repealed.
(Ord. No. 98.01, 1-8-98; Ord. No. 2002.06, 5-30-02)

Sec. 22-147. Repealed.
(Ord. No. 98.01, 1-8-98; Ord. No. 2002.06, 5-30-02)

Sec. 22-148. Repealed.
(Ord. No. 98.01, 1-8-98; Ord. No. 2002.06, 5-30-02)

Sec. 22-149. Repealed.
(Ord. No. 98.01, 1-8-98; Ord. No. 2002.06, 5-30-02)

Sec. 22-150. Repealed.
(Ord. No. 98.01, 1-8-98; Ord. No. 2002.06, 5-30-02)

Sec. 22-151. Repealed.
(Ord. No. 98.01, 1-8-98; Ord. No. 2002.06, 5-30-02)

Sec. 22-152. Repealed.
(Ord. No. 98.01, 1-8-98; Ord. No. 2002.06, 5-30-02)

Sec. 22-153. Repealed.
(Ord. No. 98.01, 1-8-98; Ord. No. 2002.06, 5-30-02)

Sec. 22-154. Repealed.
(Ord. No. 98.01, 1-8-98; Ord. No. 2002.06, 5-30-02)

Sec. 22-155. Repealed.
(Ord. No. 98.01, 1-8-98; Ord. No. 2002.06, 5-30-02)

Sec. 22-156. Repealed.
(Ord. No. 98.01, 1-8-98; Ord. No. 2002.06, 5-30-02)

Sec. 22-157. Repealed.
(Ord. No. 98.01, 1-8-98; Ord. No. 2002.06, 5-30-02)

Sec. 22-158. Repealed.
(Ord. No. 98.01, 1-8-98; Ord. No. 2002.06, 5-30-02)

Sec. 22-159. Repealed.
(Ord. No. 98.01, 1-8-98; Ord. No. 2002.06, 5-30-02)

Sec. 22-160. Repealed.
(Ord. No. 98.01, 1-8-98; Ord. No. 2002.06, 5-30-02)

Secs. 22-161—22-170. Reserved.

ARTICLE VIII. TRANSIT

DIVISION 1. GENERALLY

Sec. 22-171. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Complaint for nonpayment of fare means a complaint whereby the passenger is charged with violating this article.

Fare means compensation paid for a light rail or bus boarding ticket from a vending machine or other source.

Fare inspector means a person authorized to enforce this section.

Guideway means an area where light rail vehicles will operate and includes the light rail track, overhead catenary system and the entire area extending seven (7) feet out from the track centerline, or within the prolonged curb lines adjoining the light rail tracks.

Identification means any government issued document that contains a photograph, date of birth and physical description, including but not limited to, height, weight, eye color, sex, origin and hair color of the person presenting the identification.

METRO means the light rail transit system operated by Valley Metro Rail, Inc.

Paid zone means the inside of a transit vehicle, light rail station platform or other areas as designated by appropriate signage or markings.

Passenger means any person lawfully occupying, riding or using any transit vehicle, boarding or alighting from such a vehicle, or waiting within a designated paid zone waiting area at a light rail station.

Proof of fare payment means a valid METRO pass or transit fare media valid for the time and day of use.

Transit vehicle means a light rail train, public bus or Valley Metro vehicle used to transport passengers.

Valley Metro means motor buses and facilities operated by Phoenix Public Transit Department, City of Tempe, City of Mesa or other local jurisdictions that operate bus transit service as part of Valley Metro, private contractors, and the Regional Public Transportation Authority.
(Ord. No. 2008.36, 8-14-08)

Sec. 22-172. Authority to order a passenger from transit vehicle or transit property.

A passenger who refuses to provide proof of fare payment or conform to any lawful regulation of this article may be removed from the vehicle by a fare inspector at any transit facility or usual stopping place.
(Ord. No. 2008.36, 8-14-08)

Sec. 22-173. Penalty.

Violations of this article shall be a civil offense and shall be enforced pursuant to the provisions of § 1-7 of this code.
(Ord. No. 2008.36, 8-14-08)

Secs. 22-174—22-179. Reserved.

DIVISION 2. FARE ENFORCEMENT

Sec. 22-180. Fare violations.

It shall be unlawful and a violation of this article for any person to:

(1) Occupy or ride in any transit vehicle that requires a fare without payment of the applicable fare;

(2) Fail to exhibit proof of fare payment upon request of a fare inspector when occupying or disembarking from a transit vehicle;

(3) Refuse to disembark a transit vehicle or transit facility upon demand of a fare inspector;

(4) Fail to provide his or her name, address and identification to a fare inspector when being served with a complaint for nonpayment of fare; or

(5) Fail to exhibit proof of fare payment upon request while waiting in a designated paid zone waiting area by a fare inspector.

(Ord. No. 2008.36, 8-14-08)

Sec. 22-181. Complaint for nonpayment of fare.

(a) A complaint shall be served on the defendant by a fare inspector pursuant to the provisions of § 1-8 of this code.

(b) If the defendant refuses to accept a complaint, the tender of the complaint by a fare inspector to the defendant shall constitute service thereof upon the defendant.
(Ord. No. 2008.36, 8-14-08)

Secs. 22-182—22-189. Reserved.

DIVISION 3. CONDUCT ON TRANSIT VEHICLES, FACILITIES AND PROPERTIES

Sec. 22-190. Transit parking and boarding.

(a) A driver shall not park a vehicle in the area designated for vehicle parking unless the person complies with posted parking regulations.

(b) If intending to pick up or drop off a transit passenger, a driver shall park in the area designated for vehicle parking or briefly stop his or her vehicle in areas designated for passenger loading or unloading, while remaining with the vehicle, and then remove the vehicle from the station without delay after the transit passenger is dropped off or picked up.

(c) No person shall stop or park a vehicle at a transit parking facility in such manner that the vehicle blocks access to a marked pedestrian walkway, designated traffic lane, parking space, fire lane, boarding zone or guideway.

(d) No person shall be permitted to remain at a transit station or stop for more than one hour.

(Ord. No. 2008.36, 8-14-08)

Sec. 22-191. Animals.

No person shall transport animals in a transit vehicle unless:

(1) The animal is a guide or service animal, including a service animal in training, that has been specially trained to assist persons with disabilities and is on a leash; or

(2) The animal is in a completely enclosed and secured cage or carrying case that is small enough to fit on the passenger's lap, and the animal does not otherwise endanger or disturb the comfort or health of other passengers.

(Ord. No. 2008.36, 8-14-08)

Sec. 22-192. Prohibited conduct on transit vehicle, property or facility.

It shall be unlawful and a violation of this article for any person to:

(1) Transport any item that blocks the aisle or the areas of the transit vehicle reserved for passengers in wheelchairs or who use mobility aids;

(2) Possess an open container of or consume an alcoholic beverage in a transit vehicle or on transit property;

(3) Carry onto or aboard a transit vehicle or transit property any flammable or explosive substance or hazardous materials;

(4) In any manner, hang onto or attach his or her body to any exterior part of a transit vehicle or touch a moving transit vehicle;

(5) Walk between coupled light-rail vehicles;

(6) Enter upon, occupy or remain upon the guideway except as necessary to board or alight a transit vehicle unless authorized by a valid permit;

(7) Throw an object at or from any transit vehicle or at any person or thing on or in any transit vehicle, or on transit property;

(8) Travel in any mode, including but not limited to, motor vehicle, pedestrian, bicycle, equestrian, roller skate, rollerblade, upon or across any guideway, or light rail station platform, except within a marked crosswalk at a signalized intersection;

(9) Place any object on any portion of the guideway;

(10) Interfere with the operation of a transit vehicle, transit facility or ticket vending machine;

(11) Interfere with the ingress or egress of any passenger on transit vehicle or transit property;

(12) Use tobacco products, or carry any lighted or smoldering substance, in any form, aboard a transit vehicle or within any space where posted signage prohibits smoking;

(13) Operate a sound-emitting device, unless the only sound produced by such item is emitted by a personal-listening attachment (earphone or headphone) audible only to the person carrying the device producing the sound, except a peace officer, firefighter, transit employee, or emergency response professional, in the course of employment;

(14) Light a flashlight, scope light, laser light or object that projects a flashing light or beams of light while inside a transit vehicle or towards a transit vehicle, except in an emergency;

(15) Place feet on or lie down on the seat of a transit vehicle or place any article on the seat which would leave grease, oil, paint, dirt or any other substance on the seat;

(16) Expectorate, defecate, urinate or litter in or upon a transit vehicle, transit property or transit facility;

(17) Light or detonate sparklers, firecrackers or other types of pyrotechnic devices in or upon a transit vehicle, transit property or transit facility;

(18) Injure, mutilate, deface, alter, change, displace, remove or destroy any sign, notice or advertisement on or in any transit vehicle or transit property;

(19) Disobey the instructions of any traffic signal, security notice, sign or marker unless otherwise directed by a fare inspector, peace officer or authorized transit representative;

(20) Recklessly damage, deface, mutilate or tamper with transit property so as to impair its function or value; or

(21) Post signs, notices or drawings or inscribe a message, slogan, sign, mark or symbol on transit property without written permission from the transit company.

(Ord. No. 2008.36, 8-14-08)

Sec. 22-193. Use restrictions.

(a) Any person adjudicated responsible of violating any provision of this article resulting in a fine is prohibited from riding a Metro transit vehicle until the sanction is fully paid.

(b) Any person adjudicated responsible for violating any provision of this article more than two (2) times is prohibited from riding a Metro transit vehicle for ninety (90) calendar days.

(c) Any person who poses a serious continuing risk to the public or transit property may be immediately removed from a Metro transit vehicle and the person will be prohibited from using Metro transit vehicles for a period not to exceed ninety (90) calendar days.

(d) Any person guilty of assaulting a fare inspector or employee acting in the scope of his employment will be prohibited from using a Metro transit vehicle for a minimum of one year.

(Ord. No. 2008.36, 8-14-08)

Secs. 22-194—22-199. Reserved.

Chapter 23

PARKS AND RECREATION[1]

ARTICLE I. IN GENERAL

Secs. 23-1—23-15. Reserved.

ARTICLE II. PARKS AND RECREATION BOARD[2]

Sec. 23-16. Repealed.
(Code 1967, § 22-4; Ord. No. 2008.01, 01-24-08)

Sec. 23-17. Repealed.
(Code 1967, §§ 22-5—22-7; Ord. No. 2008.01, 01-24-08)

Sec. 23-18. Repealed.
(Code 1967, § 22-8; Ord. No. 99.01, 2-4-99; Ord. No. 2001.17, 7-26-01; Ord. No. 2006.25, 4-6-06; Ord. No. 2008.01, 01-24-08)

Sec. 23-19. Repealed.
(Code 1967, § 22-9; Ord. No. 2008.01, 01-24-08)

Sec. 23-20. Repealed.
(Code 1967, § 22-10; Ord. No. 97.57, 12-11-97; Ord. No. 2001.17, 7-26-01; Ord. No. 2002.22, 8-1-02; Ord. No. 2006.25, 4-6-06; Ord. No. 2008.01, 01-24-08)

Sec. 23-21. Repealed.
(Ord. No. 99.01, 2-4-99; Ord. No. 2008.01, 01-24-08)

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[1]**Cross references**—Sponsorship review committee, § 2-205 et seq.; parks, recreation, golf, and double butte cemetery advisory board, § 2-235 et seq.; sales by mobile merchants in public parks, § 24-29; trees and landscaping in public rights-of-way and parks, § 29-36 et seq.

[2]**Editor's note**—Ord. No. 2008.01 repealed the parks and recreation board from Ch. 23 and it has been incorporated into Ch. 2, Art. V, Div. 17, parks and recreation board, § 2-335 et seq. Ord. No. 2010.03 consolidated the golf advisory committee and the parks and recreation board into the parks, recreation and golf advisory board, § 2-235 et seq. Ord. No. 2014.22 consolidated the parks, recreation and golf advisory board and the double butte cemetery advisory committee into a single advisory board, § 2-235 et seq.

Secs. 23-22—23-34. Reserved.

ARTICLE III. PARK RULES

DIVISION 1. GENERALLY

Sec. 23-35. Exemptions; interference with special events prohibited.

(a) Sections 23-36, 23-37, 23-37.1, 23-45, 23-46, 23-56 and 23-57 of this division shall not apply during, or within the areas designated for, special events as permitted by issuance of a permit pursuant to § 5-2 of this code.

(b) When any special event as defined in § 5-2 of this code is conducted at any city park, all persons not participating therein shall keep clear of participants in the event.
(Ord. No. 2007.21, 5-17-07)

Sec. 23-36. Hours of operation.

No person shall trespass upon or be upon the grounds, other than public sidewalks or streets located therein, of any city park, playground or golf course without the express written permission of the official designated by the community services director, between the hours of 10:00 p.m. and 6:00 a.m., unless otherwise posted; provided, however, with respect to any city park, playground or golf course that is equipped with either general area or athletic lighting which is functioning, the closing time may be extended to 12:00 midnight.
(Code 1967, § 22-1; Ord. No. 637.6, § I, 12-13-84; Ord. No. 99.01, 2-4-99; Ord. No. 2001.17, 7-26-01; Ord. No. 2001.21, 10-18-01; Ord. No. 2006.25, 4-6-06; Ord. No. 2007.21, 5-17-07; Ord. No. 2007.62, 9-6-07; Ord. No. 2010.02, 2-4-10)

Sec. 23-37. Operation of motor vehicles, horses.

No person shall drive or ride at any time any automobile, truck, motorcycle, motor scooter, motorized play vehicle or motorized skateboard as defined in §§ 19-1(b)(6) and (7) of this code, horse or other motor vehicle or animal upon the grounds of any city park, playground or golf course, except in public streets running through such premises or within designated parking areas located upon the premises, without the express written permission of the official designated by the community services director.

(1) A maximum speed of five (5) m.p.h. shall be in effect at all times, unless otherwise posted;

(2) Unlicensed motor vehicles or unlicensed operators shall not be allowed on any park property. With the exception of city vehicles or authorized maintenance vehicles, all motor vehicles shall remain on surfaced roadways at all times; and

(3) Horses shall be allowed only on designated bridle paths.
(Code 1967, § 22-2; Ord. No. 637.6, § I, 12-13-84; Ord. No. 99.01, 2-4-99; Ord. No. 2001.17, 7-26-01; Ord. No. 2001.21, 10-18-01; Ord. No. 2006.25, 4-6-06; Ord. No. 2007.21, 05-17-07; Ord. No. 2010.02, 2-4-10)

Sec. 23-37.1. Parking of motor vehicles.

No person shall park any automobile, truck, motorcycle, motor scooter, motorized play vehicle or motorized skateboard as defined in §§ 19-1(b)(6) and (7) of this code, or other motor vehicle upon the grounds of any city park, playground or golf course, except within specifically designated parking areas during park hours.
(Ord. No. 2001.21, 10-18-01)

Sec. 23-38. Abusing facilities.

No person shall damage or wastefully or improperly use the toilet, water and sewer facilities in any city park, playground or golf course or cause the lighting facilities or electrical appliances to be turned on or used without written permission of the official designated by the community services director.
(Code 1967, § 22-3; Ord. No. 637.6, § I, 12-13-84; Ord. No. 2001.17, 7-26-01; Ord. No. 2006.25, 4-6-06; Ord. No. 2010.02, 2-4-10)

Sec. 23-39. Use of water facilities.

No person shall use any portion of any city park or city lake, lagoon or other water facilities located in any city park or areas without the express written permission of the official designated by the community services director or designee.
(Code 1967, § 22-3.1; Ord. No. 637.6, § I, 12-13-84; Ord. No. 99.01, 2-4-99; Ord. No. 2001.17, 7-26-01; Ord. No. 2006.25, 4-6-06; Ord. No. 2010.02, 2-4-10; Ord. No. 2011.04, 1-27-11)

Sec. 23-40. Prohibited activities.

(a) The following activities are prohibited in all city parks, unless otherwise posted:

(1) No persons shall commit any act in a public park or recreation facility so as to endanger the health and safety of themselves or other park and recreation facility users;

(2) No person shall use any portion of any city park or city-owned property for golfing purposes, or make use of any golf club or golf ball in any city park or on city-owned property, except at places designated for golfing;

(3) No person shall use any portion of any city park or city-owned property for archery, firearm or other projectile-producing devices;

(4) No person shall use any portion of any city park or city-owned property for ice-blocking or sledding with any device;

(5) No person shall use any water source at any city park or city-owned property for swimming or bathing, animal swimming or bathing, washing clothes, cleaning fish or other unsanitary activities, except at places designated for such activities;

(6) No person shall operate skateboards, roller skates, in-line skates, bicycles or any rolling (nonmotorized) vehicles in city parks where such activity is specifically prohibited by appropriate posting or in an unsafe manner so as to infringe upon the safety of themselves or other park users;

(7) No person shall possess any glass beverage container, unless specifically authorized by a permit issued pursuant to § 23-56 of this chapter;

(8) No person shall knowingly, intentionally or recklessly litter, break, throw, toss or otherwise propel any glass object or container; and

(9) No person shall fly a kite, remote control plane or similar aerial device within Tempe Beach Park or Rio Salado Park.

(b) The community services director or designee for Rio Salado Park is hereby delegated the authority to establish additional prohibited activities at specified parks.
(Code 1967, § 22-3.2; Ord. No. 637.6, § I, 12-13-84; Ord. No. 99.01, 2-4-99; Ord. No. 2001.17, 7-26-01; Ord. No. 2004.09, 4-1-04; Ord. No. 2006.25, 4-6-06; Ord. No. 2007.21, 5-17-07; Ord. No. 2010.02, 2-4-10; Ord. No. 2011.04, 1-27-11)

Sec. 23-41. Repealed.
(Code 1967, § 22-3.3; Ord. No. 637.6, § I, 12-13-84; Ord. No. 99.01, 2-4-99)

Sec. 23-42. Repealed.
(Code 1967, § 22-3.4; Ord. No. 637.6, § I, 12-13-84; Ord. No. 99.01, 2-4-99)

Sec. 23-43. Repealed.
(Code 1967, § 22-3.5; Ord. No. 637.6, § I, 12-13-84; Ord. No. 97.10, 2-13-97)

Sec. 23-44. Repealed.
(Code 1967, § 22-3.6; Ord. No. 637.6, § I, 12-13-84; Ord. No. 97.10, 2-13-97)

Sec. 23-45. Spirituous liquor in parks prohibited.

(a) The possession or consumption of spirituous liquors in city parks is prohibited, except that malt beverages are allowed for personal consumption with a one day permit issued by the community services department, or by the designee of such department, pursuant to § 23-56 of this code. The prohibition of spirituous liquors in any city park shall be conspicuously posted near all entrances to the park.

(b) This section does not apply to the possession or consumption of spirituous liquors in connection with any concessions authorized by the city at Rio Salado Park. Permits will not be issued for personal consumption of malt beverages on Rio Salado Town Lake.

(c) Any person or persons guilty of violating any of the provisions of this section shall be deemed guilty of a misdemeanor and punishable as set forth in § 1-7 of this code.
(Code 1967, § 22-3.7; Ord. No. 637.7, 2-28-85; Ord. No. 97.10, 2-13-97; Ord. No. 99.01, 2-4-99; Ord. No. 2001.21, 10-18-01; Ord. No. 2006.25, 4-6-06; Ord. No. 2007.21, 5-17-07; Ord. No. 2010.02, 2-4-10; Ord. No. 2011.14, 6-2-11)

State law reference—A.R.S. § 4-244.

Sec. 23-46. Sound amplification equipment.

It shall be unlawful for any person to use any sound amplification equipment without first obtaining a permit for said use issued by the community services department or the designee of such department. The application fee shall be established by the city council (see Appendix A). Permits shall be issued subject to the following restrictions:

(1) Permits will only be issued to Tempe residents and be valid only for the day specified on the permit;

(2) The permits shall be issued only for Rio Salado Park, Kiwanis Park and Tempe Beach Park and shall designate in which areas of those parks the sound amplification equipment may be used;

(3) The amplification shall remain at an acceptable sound level that does not disturb the reasonable use of the park facilities by other users;

(4) The acceptable sound level shall be determined by a representative of the community services department or the police department and any permittee refusing to abide by their decision will have their permit revoked immediately; and

(5) Permits will only be issued for functions where music is an ancillary part of the function and no admission shall be charged for any musical exhibition.
(Ord. No. 86.29, § 1, 4-24-86; Ord. No. 99.01, 2-4-99; Ord. No. 2006.25, 4-6-06; Ord. No. 2007.21, 5-17-07; Ord. No. 2010.02, 2-4-10)

Sec. 23-47. Repealed.
(Ord. No. 86.34, § 1, 5-15-86; Ord. No. 97.10, 2-13-97)

Sec. 23-48. Repealed.
(Ord. No. 87.20, 7-9-87; Ord. No. 2001.21, 10-18-01; Ord. No. 2004.09, 4-1-04)

Sec. 23-49. Park management plans.

(a) In order to better preserve the natural desert environment or other unique characteristics of a city park, the city council may adopt a management plan for a city park or parts of a city park.

(b) The public works director, in consultation with the parks, recreation, golf, and double butte cemetery advisory board and appropriate city department directors, may develop management plans for review and adoption by the city council.

(c) The provisions of a management plan adopted by the city council shall be enforced as provided in division 4 of this article III.
(Ord. No. O2014.51, 10-2-14)

Secs. 23-50—23-55. Reserved.

DIVISION 2. PARK AND BUILDING USE PERMIT

Sec. 23-56. When required; consideration of applications.

(a) A permit shall be obtained for use of locations as designated by the community services director whenever any person or group desires to consume malt beverages in any city park or whenever any person or group desires to reserve any portion of the public community services facilities or park, for any activity. The community services director shall interpret this division and may act in any case not specifically covered by this division. Any request for a use not contemplated or prohibited in this division may be forwarded to the city manager who will render a decision concerning such use.

(b) A permit for consumption of malt beverages will be issued only for consumption of malt beverages in city parks of three (3) acres or more. The permit will be valid until sundown of the requested permit date. An application for a permit to consume malt beverages after sundown may only be issued if the individual or group of persons also reserves a portion of the community services facilities pursuant to subsection (c) of this section. Malt beverages shall not be consumed within the community services department's buildings at any time; or in any other portion of a public park or recreational area at such times as recreational activities organized by the community services department are being conducted.

(c) City and department-organized activities shall be given first preference for use of the public community services facilities. An application to reserve a community services facility or portion thereof by persons or groups not officially a part of the community services department shall be initiated at least two (2) weeks prior to the requested date, and have written approval from the community services department; provided however, that upon showing of good cause, an official designated by the community services director may waive or shorten the two-week time period as set forth above.

(d) Any permit or written approval issued pursuant to this section must be in the possession of at least one adult person using the park or facilities and must be shown upon request.
(Code 1967, § 22-11; Ord. No. 637.6, § II, 2-13-84; Ord. No. 97.10, 2-13-97; Ord. No. 2001.17, 7-26-01; Ord. No. 2006.25, 4-6-06; Ord. No. 2010.02, 2-4-10; Ord. No. 2012.56, 12-13-12)

Sec. 23-57. Rules of conduct upon approval; grounds for revocation.

(a) All activities must be under competent, adult supervision, with the responsible party using the facility assuming full responsibility for any damage to the facility or the equipment. The responsible party named on the permit must be in attendance at the event at all times during the permitted use. The community services department employee on duty shall exercise authority over the individual or organization, and its activities. If the adult supervision is inadequate, it shall be the responsibility of the community services employees on duty to report same to the

community services department. Cleanup of the contracted area will be the responsibility of the permittee. The permittee shall be charged on an hourly basis to pay for cleanup if it is necessary for the city to provide additional cleanup services. The use fees or charges shall be established by the city council and administered by the community services department. A cleanup deposit and security deposit may be required if deemed necessary. All fees and charges are due prior to use. If fees or deposits are not received timely, the permit will be canceled. Deposits are non-refundable except in those cases in which the city is unable to permit use of a park or facility after such permit is issued, or if unique circumstances exist, at the discretion of the community services director.

(b) In addition to other legal action, all permits shall be revocable for cause by an official designated by the community services director upon the finding of a violation of any rule, this code or other city ordinance or applicable state statute.

(c) No property, furniture or equipment shall be moved into a recreation facility unless special permission is granted in advance and so stated in the permit. Such apparatus, furniture or equipment (provided by the holder of the permit) shall be removed promptly after use. Any property remaining at the facility or park after the termination of the event, shall be deemed abandoned and disposed of by the city, at any time, in its discretion.

(d) The permittee shall indemnify the city for any and all loss, damage or injuries to any person or persons, including death. Adequate insurance as determined by the city risk management division shall be provided by each permittee to cover such liability listing the city as an additional insured. Responsibility for loss, breakage or need for repair of any piece of the facility or area shall be upon the individual signing the permit.

(e) Building facilities and areas must be vacated by the standard closing hours of the facility unless permission is otherwise granted specifically in the permit and a fee may be assessed as per city fee schedule. It is the responsibility of the permitee to ensure that the policy is administered. Set-up, cleanup and clearance of the facility or park as stated in the permit, is to be included in the requested reservation time.

(f) The following specific rules shall be observed while using any facility and the permittee shall be held responsible for any loss or damage growing out of such violation.

(1) If a permittee fails to vacate by the time specified in the permit, permittee may be charged for the excess time;

(2) No tobacco use or smoking shall be allowed;

(3) If notice of cancellation of a request is not received at the facility that issued the permit at least forty-eight (48) hours prior to the date of the event, the permit holder shall be held responsible for all charges at the discretion of an official designated by the community services director; and

(4) Functions shall be confined to the specific part of the facility assigned to the permittee.

(g) The following activities shall be prohibited:

(1) Any use that detracts from general public enjoyment; or, any use of the park or facility that interferes with maintenance;

(2) Use that unreasonably interferes with public health, welfare, safety and recreation; or

(3) Use that creates or contributes to extraordinary or burdensome expense or police supervision.

(h) The total number of people admitted for any usage shall not exceed the capacity of the facility involved, as determined by an official designated by the community services director and/or the city fire marshal.

(i) A minimum of one community services department employee shall be on duty at all times when community services department building facilities are scheduled. He shall be responsible and paid by the community services department, and no organization using a community services building facility shall make any payment to such employee.

(j) The use of special equipment shall be permitted only when operated by community services department employees or other persons specifically authorized in the permit. When used by other than community services employees, and so stated in the permit, the special equipment must be returned in the condition in which it was found (with the exception of normal wear) or the user shall be responsible for repair or replacement charges.

(k) No material of any kind shall be attached to any part of the facility or area without written permission of the official designated by the community services director.

(l) Some uses may require additional control personnel by the city as deemed necessary by the official designated by the community services director. Additional personnel must be paid for by the permittee prior to the start of the use.

(m) Concession rights shall be reserved unless specifically stated otherwise in the permit. As to concession rights, no helium balloons are permitted to be placed or sold within Tempe Beach Park or Rio Salado Park. No popcorn is permitted to be sold in Rio Salado Park.

(n) No community services department kitchen facility shall be used except as specifically outlined by the official designated by the community services department. Facilities must be cleaned after use and approval inspection given.

(o) Continuous use of facilities may be permitted and may be reissued as determined to serve the needs of the community, and city facilities and programs, as determined by the community services director. No permit shall exceed a period of time of one year. Continuous use shall be defined as use at least one time per month for six consecutive months.

(p) When an application for use of the facilities has been approved, notification shall contain the date, hours of use, type of activity and the number of participants.
(Code 1967, § 22-12; Ord. No. 637.6, § II, 12-13-84; Ord. No. 2001.17, 7-26-01; Ord. No. 2006.25, 4-6-06; Ord. 2007.21, 5-17-07; Ord. No. 2010.02, 2-4-10; Ord. No. 2012.56, 12-13-12)

Sec. 23-58. Repealed
(Code 1967, § 22-13; Ord. No. 637.6, § II, 12-13-84; Ord. No. 2001.21, 10-18-01)

Sec. 23-59. Repealed.
(Ord. No. 99.01, 2-4-99; Ord. No. 2007.21, 5-17-07)

Secs. 23-60—23-70. Reserved.

DIVISION 3. BOATING

Sec. 23-71. Exemptions.

The provisions of this division shall not apply to:

(1) Any boat owned or operated by the city, or any agent thereof, when such boat is being used to enforce the provisions of this division or when such boat is being used to effect the rescue of any person or property upon or in the waters of any city park or area;

(2) Any boat owned or operated by other law enforcement agencies, when such boat is being used to enforce applicable state law provisions;

(3) Any boat used by the city, or any agent thereof, for the operation and maintenance of Town Lake or Kiwanis Lake;

(4) Any boat used for concessions as a part of an agreement with the city; or

(5) Any boat used as part of an authorized special event or with a special permit, except that the exemption only applies to §§ 23-75 and 23-76.

(Code 1967, § 22-22; Ord. No. 99.01, 2-4-99)

Sec. 23-72. Applicable regulations.

All applicable city ordinances and statutes of the state and all boating regulations of the state game and fish department shall be observed while boating upon the waters of any city park or area. In the event of a conflict between a city ordinance and a state statute or regulation, the more restrictive provision shall prevail and be obeyed.
(Code 1967, § 22-21)

State law reference—Boating and water sports, A.R.S. § 5-301 et seq.

Sec. 23-73. Permitted on certain waters.

Notwithstanding the provisions of § 23-39, boating shall be permitted upon the waters of Town Lake and Kiwanis Lake and upon such other waters as the council may hereinafter designate by resolution, subject to the provisions of this division.
(Code 1967, § 22-14; Ord. No. 99.01, 2-4-99)

Sec. 23-74. Permit required; fees.

(a) In addition to such other registration as is required by applicable law, no boat may be placed in the waters of any lake, lagoon or other water facility located in any city park or area unless there is affixed to the stern of such boat a city boating permit, to be issued by the community services director. For Rio Salado Park, the community services director or designee shall issue all city boating permits.

(b) Applications for boating permits shall include the following:

(1) The owner's name and address;

(2) A description of the boat covered by the permit;

(3) The state boat registration number of such boat; and

(4) Such other information as the director of the community services department or the designee of such department determines to be necessary to fully accomplish the purposes of this division.

(c) Each application for a boating permit shall be accompanied by a permit fee established annually by the city.

(d) Each boating permit issued by the community services director shall be valid only during the calendar year of its issuance and may be renewed annually upon reapplication accompanied by the permit fee, as set forth in subsection (c) of this section.

(e) In addition to permit fees, the city shall have the authority to establish a nominal daily use fee for persons using Rio Salado Town Lake for boating or special event purposes.

(f) Notwithstanding any boating permit, the city may close any lake to public boating at any time, if such closure is necessary for the operation and maintenance of the lake, or if there is a potential threat to public health, safety or welfare.
(Code 1967, § 22-15; Ord. No. 99.01, 2-4-99; Ord. No. 2001.17, 7-26-01; Ord. No. 2006.25, 4-6-06; Ord. No. 2007.21, 5-17-07; Ord. No. 2010.02, 2-4-10; Ord. No. 2011.04, 1-27-11)

Sec. 23-75. Prohibited during certain hours.

(a) No boat shall be placed in or sailed, operated or floated upon the waters of any city park or area between the times of sunset and sunrise as established by the United States Naval Observatory or as posted by the director of the community services department or the designee of such department.

(b) The community services director or designee shall establish the hours for boats to be placed in, sailed, operated or floated upon Town Lake.
(Code 1967, § 22-16; Ord. No. 2007.21, 5-17-07; Ord. No. 2010.02, 2-4-10; Ord. No. 2011.04, 1-27-11)

Sec. 23-76. Boat types regulated.

(a) Subject to the provisions of subsection (b) of this section, no boat in excess of fourteen (14) feet in length shall be placed in or sailed, operated or floated upon the waters of any city park or area.

(b) Notwithstanding the provisions of subsection (a) of this section, no canoe in excess of seventeen (17) feet in length shall be placed in or sailed, operated or floated upon the waters of any city park or area.

(c) No inflatable rubber boat of less than six (6) feet in length shall be placed in or sailed, operated or floated upon the waters of any city park or area.

(d) No rafts, inner tubes, inflatable mattresses, catamarans, sail boards or paddle boards shall be placed in or sailed, operated or floated upon the waters of any city park or area.

(e) No boat may be driven by or equipped with an electric motor or gasoline engine while placed in or sailed, operated or floated upon the waters of any city park or area.

(f) Notwithstanding the provisions of subsections (a) through (e) of this section, the following boat types for Rio Salado Town Lake shall be permitted:

(1) Rowing shells up to sixty (60) feet in length;

(2) Inflatable boats constructed with durable, reinforced fabric with two (2) air chambers of six (6) feet or greater; boats must be able to float with only one chamber;

(3) Pontoon boats and utility boats with electric motors only, no gas motor shall be attached to the boat;

(4) Kayaks, canoes, dragon boats, stand up paddle boards and outriggers of any length;

(5) Peddle boats;

(6) Catamarans and sailboats, subject to mast height not exceeding thirty (30) feet from water surface level;

(7) Motorized boats used and operated for safety, emergency, lake maintenance, special events and operation of the Rio Salado town lake. In no case will motors other than four (4) stroke engines be permitted on Rio Salado Town Lake; and

(8) Watercraft rented or leased from an authorized city boat concessionaire.

(g) The community services director or designee may modify the list of permitted watercraft on Rio Salado Town Lake.

(Code 1967, § 22-17; Ord. No. 99.01, 2-4-99; Ord. 2007.21, 5-17-07; Ord. No. 2011.04, 1-27-11)

Sec. 23-77. Personal flotation devices.

(a) Each boat shall be equipped with at least one serviceable personal flotation device, approved by the United States Coast Guard, for each person aboard such boat while same is being operated upon the waters of any city park or area.

(b) The provisions of subsection (a) do not apply to the operation of a racing shell or rowing scull during competitive racing or training.

(c) Each child twelve (12) years of age and under shall wear a serviceable Type I, II or III personal flotation device, approved by the United States Coast Guard, at all times while boating upon the waters of any city park or area.

(d) While stand up paddle boarding, each person thirteen (13) years of age and over shall wear a personal floatation device or ankle leash on Tempe Town Lake.

(Code 1967, § 22-18; Ord. No. 99.01, 2-4-99; Ord. No. 2007.21, 5-17-07; Ord. No. 2011.04, 1-27-11)

Sec. 23-78. Prohibited boating activities.

(a) No boat shall be loaded or operated with passengers or cargo in excess of its safe carrying capacity or the limitations on the manufacturer's load capacity plate.

(b) No person shall navigate, direct or handle any boat in a careless, reckless or negligent manner, or so as to interfere with the authorized use of the lake by others, or in an area not designated for that boating use.

(Code 1967, § 22-19; Ord. No. 99.01, 2-4-99)

Sec. 23-79. Launching areas.

(a) All boats that arrive by trailer shall be launched and removed from the water only at designated boat ramps or launch areas provided for such purpose.

(b) No person shall park or place any motor vehicle so as to block or obstruct the launching area or the driveways leading thereto.

(Code 1967, § 22-20; Ord. No. 99.01, 2-4-99; Ord. No. 2007.21, 5-17-07)

Sec. 23-80. Repealed

(Code 1967, § 22-23; Ord. No. 2001.21, 10-18-01)

DIVISION 4. ADMINISTRATION AND ENFORCEMENT

Sec. 23-81. Commencement of civil action, citation, contents

All violations under this article are civil unless otherwise specified, and shall be commenced by delivering a citation to the person responsible for the violation.

(Ord. No. 2001.21, 10-18-01; Ord. No. 2002.35, 8-8-02)

Sec. 23-82. Repealed.

(Ord. No. 2001.21, 10-18-01; Ord. No. 2002.35, 8-8-02)

Sec. 23-83. Repealed.
(Ord. No. 2001.21, 10-18-01; Ord. No. 2002.35, 8-8-02)

Sec. 23-84. Civil fines and penalties imposed.

(a) The civil fine/penalty for violating any provision of this article, unless otherwise specified, shall be not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000).

(b) In addition to the amount of the fine imposed under subsection (a) above, there is imposed a default penalty in the amount of fifty dollars ($50) should the defendant fail to appear and answer for a violation of this article within the time period stated on the citation or fails to appear at the time and place set by the court for a matter arising under this article.

(c) The court may enforce collection of delinquent fines and fees as may be provided by law. Any judgment for civil sanction pursuant to this code may be collected as any other civil judgment.
(Ord. No. 2001.21, 10-18-01)

Sec. 23-85. Repealed
(Ord. No. 2001.21, 10-18-01; Ord. No. 2002.35, 8-8-02)

Sec. 23-86. Each day separate violations.

Each day that a violation of this article is permitted to continue or occur by the defendant shall constitute a separate offense subject to separate citation pursuant to the provisions of this article.
(Ord. No. 2001.21, 10-18-01)

Sec. 23-87. Habitual offender.

A person who commits a violation of this article after having previously been found responsible by the court on three (3) separate occasions for committing a civil violation of this article within a twenty-four (24) month period, whether by admission, by payment of the fine, by default, or by judgment after hearing, shall be charged with a criminal misdemeanor pursuant to the general penalties provision of § 1-7. The Tempe city prosecutor is authorized to file a criminal misdemeanor complaint in the Tempe Municipal Court against habitual offenders who violate this section. In applying the twenty-four (24) month provision, the dates of the commission of the offense shall be the determining factor, irrespective of the sequence in which the offenses were committed.
(Ord. No. 2001.21, 10-18-01)

Secs. 23-88—23-89. Reserved.

ARTICLE IV. URBAN CAMPING

Sec. 23-90. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Camp means resident in or using a public park, preserve, street or other public place for living accommodation purposes; including, but not limited to, activities such as erecting tents or any structure providing shelter, laying down bedding for the purpose of sleeping, storing personal belongings, starting a fire, regularly cooking or preparing meals, or living in a parked vehicle.

Preserve means any real property designated by the city council as a preserve.

Public park includes all city parks and playgrounds.

Public street includes all public streets and highways, public sidewalks, public benches and public parking lots.

Public place includes public plazas, transportation facilities, schools, attractions, monuments, and any improved or unimproved public area.
(Ord. No. 97.25, 8-21-97; Ord. No. 2002.22, 8-1-02)

Sec. 23-91. Prohibited acts.

No person shall camp in any public park, preserve, street or place; except in areas specifically for such use, or specifically authorized by permit.
(Ord. No. 97.25, 8-21-97; Ord. No. 2002.22, 8-1-02)

Sec. 23-92. Penalty.

Any person convicted of a violation of any provision of this article shall be guilty of a class 1 misdemeanor punishable as set forth in § 1-7 of this code.
(Ord. No. 97.25, 8-21-97)

Secs. 23-93—23-99. Reserved.

ARTICLE V. PRESERVES

DIVISON 1. GENERALLY

Sec. 23-100. Scope.

(a) The provisions of this article shall apply exclusively to the properties designated by the city council as a preserve, each and all of which shall be referred to in this article as a preserve.

(b) If there is a conflict between the provisions of this article and any other provision of this code pertaining to parks, the provisions of this article shall prevail.
(Ord. No. 2002.22, 8-1-02)

Sec. 23-101. Purpose.

(a) The purpose of a preserve is to establish a preserve of desert land as a habitat for desert vegetation, wildlife and natural resources; and to protect archaeological, paleontological and historical resources and sites, while providing appropriate public access.

(b) A preserve will be left in as pristine a state as possible to maintain for this and future generations a nearby natural desert refuge from the rigors of urban life.

(c) A preserve will not contain traditional facilities or improvements associated with a public park, but may contain facilities or improvements that the city determines are necessary or appropriate to support its activities.
(Ord. No. 2002.22, 8-1-02)

Sec. 23-102. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Designated and posted means identified by appropriate signs; or by established physical barriers, including, but not limited to posts, branches or rocks; or by other means reasonably calculated to give notice to the public.

Preserve means any real property designated by the city council as a preserve.

Spirituous liquor means alcohol, brandy, rum, tequila, mescal, gin, wine, porter, ale, beer, any malt liquor or malt beverage, absinthe, a compound or mixture of any of them with any vegetable or other substance, alcohol bitters, bitters containing alcohol, any liquid mixture or preparation, whether patented or otherwise, which produces intoxication, fruits preserved in ardent spirits, and beverages containing more than one-half percent of alcohol by volume or as defined by A.R.S. § 4-101, as it may be amended from time to time.

Trail means an area or areas of a preserve that have been designated and posted as trails, including historical trails if designated and posted.

Trailhead means areas which have been designated and posted as trail access points for a preserve.
(Ord. No. 2002.22, 8-1-02)

Secs. 23-103—23-109. Reserved.

DIVISION 2. PRESERVE RULES AND REGULATIONS

Sec. 23-110. Rules for use; criminal penalty.

(a) All persons using a preserve shall comply with the following, except as may be specifically authorized by a permit or permits issued as provided in § 23-112 of this article:

(1) No person shall trespass upon or be upon the grounds without the express written permission of the official designated by the community services director, between the hours of 10:00 p.m. and 6:00 a.m., unless otherwise posted;

(2) No person shall possess or consume spirituous liquors in a preserve;

(3) No motorized vehicles shall be allowed in a preserve. This provision shall not be construed, however, to prevent the use and operation of a motorized wheelchair by a person who ordinarily uses such equipment, when the person is engaged in activities otherwise permitted in a preserve;

(4) No camping shall be permitted in a preserve as defined in § 23-90 of this chapter;

(5) No person shall remove, deface, damage, disturb or excavate any materials from or in a preserve, or any historical, prehistorical, archaeological, paleontological, or geologic site or feature situated within a preserve, including, but not limited to, plants, rocks, any other earth material, historical or other archaeological resources, such as petroglyphs and dead or decaying plant materials;

(6) No person shall deface, damage or inscribe a message, slogan, sign or symbol upon any natural feature in a preserve, including the ground itself, using any material, including paint or markers of any kind;

(7) No person shall destroy, dig up, mutilate, collect, cut, harvest or remove any live or dead tree or plant material in or from a preserve; and

(8) No person shall dig, remove or excavate any sand, gravel, rocks or soil from within a preserve.

(b) Any person or persons guilty of violating any of the provisions of this section shall be deemed guilty of a misdemeanor and punishable as set forth in § 1-7 of this code.
(Ord. No. 2002.22, 8-1-02; Ord. No. 2004.09, 4-1-04; Ord. No. 2006.25, 4-6-06; Ord. No. 2010.02, 2-4-10)

Sec. 23-111. Rules for use; civil penalty.

(a) All persons using a preserve shall comply with the following, except as may be specifically authorized by a permit or permits issued as provided in § 23-112 of this article:

(1) No person shall park any automobile, truck, motorcycle, motor scooter, motorized play vehicle or motorized skateboard as defined in §§ 19-1(b)(6) and (7) of this code, or other motor vehicle upon the grounds of a preserve except within specifically designated parking areas during preserve hours;

(2) No person shall commit any act in a preserve so as to endanger the health and safety of themselves or other preserve users;

(3) No person shall use any portion of a preserve for golfing purposes;

(4) No person shall use any portion of a preserve for archery, firearm or other projectile producing devices;

(5) No person shall use any water source at a preserve for swimming or bathing, animal swimming or bathing, washing clothes, cleaning fish or other unsanitary activities, except at places designated for such activities;

(6) No person shall operate skateboards, roller skates, in-line skates, bicycles or any rolling (nonmotorized) vehicles in a preserve;

(7) No person shall use any sound amplification equipment in a preserve;

(8) No fires or cooking are allowed in a preserve;

(9) No person shall damage or wastefully or improperly use any city-owned improvements in a preserve.

(10) All preserve users must remain on designated and posted trails to prevent damage to the land and all other areas shall be considered “off limits” for any use;

(11) No person shall use any preserve facility, or any area in a preserve which has been declared “closed” and which has been so designated and posted by the city;

(12) The sale of food, beverages or other merchandise is prohibited;

(13) No person shall feed, threaten, harass, disturb or collect wildlife in a preserve;

(14) No person shall remove any wildlife from a preserve, or release, abandon, place, bury or otherwise dispose of any animal, carcass or remains of an animal in a preserve;

(15) Possession or use of fireworks in a preserve is prohibited;

(16) No person shall tether, launch or land a hot air balloon in a preserve, except in the case of emergency;

(17) Dogs are restricted to trailheads and designated trails, except dogs being used by city police personnel or other law enforcement officers in the course of their official duties;

(18) Dogs must be secured on a leash of not more than six (6) feet at all times while in a preserve. The owner or custodian of a dog is responsible for the acts and conduct of the dog at all times when the dog is in a preserve;

(19) The owner or person in custody of a dog shall immediately pick up all dog droppings (fecal matter), place them in a closed or sealed container and deposit them into a trash receptacle or remove them from a preserve. The owner or person in custody of a dog must have in their possession a waste container for pick up purposes;

(20) No person shall ride a horse or other animal upon the grounds of a preserve except horses being used by city police personnel or other law enforcement officers in the course of their official duties;

(21) No person shall throw, deposit or place any commercial or non-commercial handbill in or upon any attended or unattended vehicle parked or located in a preserve, or upon any structure within a preserve;

(22) No person shall have a glass beverage container in a preserve; and

(23) No person shall knowingly, intentionally or recklessly litter, or throw, toss or otherwise propel any glass object or container in a preserve.

(b) All violations under this section are civil and shall be enforced as specified in §§ 1-7 through 1-11 of this code.
(Ord. No. 2002.22, 8-1-02; Ord. No. 2004.09, 4-1-04)

Sec. 23-112. Permits; exceptions.

(a) The provisions of §§ 23-110 and 23-111 shall not apply to persons or groups which have been issued a permit by the community services director, or designee, to engage in such activities. Also the provisions shall not apply to city police personnel or other law enforcement officers, fire medical rescue department personnel and other city employees in the course of their official duty; or others authorized by the city to perform inspection, repair or maintenance work, persons providing emergency, search and rescue, medical services or others on preserve related business when authorized by the community services director.

(b) Any permit issued pursuant to this section must be in the possession of at least one person using a preserve and must be shown upon request.
(Ord. No. 2002.22, 8-1-02; Ord. No. 2006.25, 4-6-06; Ord. No. 2010.02, 2-4-10; Ord. No. O201.14, 3-20-14)

Sec. 23-113. Authority to establish additional rules and regulations.

The community services director shall have the authority to make such additional rules and regulations as are necessary to manage, use, preserve and govern a preserve and the activities that are the subject of this article and shall do so with the assistance of the parks, recreation and golf advisory board and, when appropriate, the historic preservation commission. Copies of such rules and regulations shall also be maintained on file in the office of the community services director and at such preserve facilities, as applicable, to which the resolutions and rules and regulations apply.
(Ord. No. 2002.22, 8-1-02; Ord. No. 2006.25, 4-6-06; Ord. No. 2010.02, 2-4-10; Ord. No. 2010.03, 3-4-10)

Chapter 24

PEDDLERS, SOLICITORS AND ITINERANT MERCHANTS[1]

ARTICLE I. IN GENERAL

Secs. 24-1—24-15. Reserved.

ARTICLE II. MOBILE MERCHANTS AND KIOSKS

DIVISION 1. GENERALLY

Sec. 24-16. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Identification card means the card issued to any individual in accordance with provisions of this article under a permit.

Kiosk vending means permitted vending from a kiosk or self-contained structure of a permanent or semi-permanent nature, which is allowed to encroach into the public right-of-way.

Mobile merchant means any person who sells any type of tangible personal property, including, but not limited to, food and drink, at or adjacent to the vehicle in which such tangible personal property is carried. This definition shall not include any person providing or offering to provide scheduled delivery of food products to the door of any residence within the city at least once every seven (7) consecutive days, nor shall this definition include a person working or acting for a person holding a mobile merchant permit issued in accordance with this article.

Mobile sales unit means any vehicle used for carrying tangible personal property for sale at or adjacent to the vehicle in which such tangible personal property is carried. This definition

[1]**Cross references—**Licenses, taxation and miscellaneous business regulations, Ch. 16; soliciting or selling in public right of way § 29-22.

shall not include any person providing or offering to provide scheduled delivery of food products to the door of any residence within the city at least once every seven (7) consecutive days.

Mobile merchant permit means the printed permit to be carried within any mobile sales unit after issuance of a permit to carry on activity as a mobile merchant.

Permit means the written authorization to carry on mobile merchant or kiosk vending activities regulated by this article.

Vending means engaging in the business of peddling, selling or displaying for sale any items of tangible personal property.
(Ord. No. 2004.16, 4-29-04; Ord. No. 2007.82; 12-13-07; Ord. No. O2014.58, 10-2-14)

Sec. 24-17. Purposes.

The purposes of this article shall be to protect the health, safety and welfare of residents and of those working within the city, by means of reasonable investigation and regulation of mobile merchants and kiosk vendors, their employees, agents, lessees or independent contractors, and to levy fees for identification cards, mobile merchant permits and permits required under this article.
(Ord. No. 2004.16, 4-29-04; Ord. No. 2007.82, 12-13-07; Ord. No. O2014.58, 10-2-14)

Sec. 24-18. Fees additional to transaction privilege tax.

All fees levied in this article shall be in addition to transaction privilege tax required by chapter 16 of this code. Failure of an applicant or permit holder to comply with such chapter shall be sufficient grounds for denial or revocation of any permit and of all mobile merchant permits and identification cards under such application or permit.
(Ord. No. 2004.16, 4-29-04; Ord. No. O2014.58, 10-2-14)

Sec. 24-19. Vending prohibited.

(a) It shall be unlawful for any person to engage in vending on any public sidewalk, right of way or city-owned property unless authorized pursuant to this article.

(b) It is not a defense to a violation of this section that the vending activity is offered on a donation basis, if there is credible evidence that the items offered for donation are subject to any minimum purchase price.

(c) Any person or persons guilty of violating any of the provisions of this section shall be deemed guilty of a misdemeanor and punishable as set forth in § 1-7 of this code.
(Ord. No. 2004.16, 4-29-04)

Sec. 24-20. Nature of permit, application and fees.

(a) Any permit issued pursuant to this article may be revoked by the finance and technology director or designee and does not confer a property right on its holder. Any amendment to location, conditions, hours or products must be approved in writing by the finance

and technology director or designee. The city reserves the right to amend vending hours upon thirty (30) days notice to the permit holder.

(b) A permit issued pursuant to this article is nontransferable and nonassignable.

(c) Any person desiring to obtain a permit under this article shall make application to the finance and technology director or designee. The application shall be accompanied by an application fee, a permit fee, an identification card fee and a fingerprinting fee (see Appendix A).

(d) A permit issued pursuant to this article may be renewed by the finance and technology director or designee for successive annual periods following the initial permit if the permit holder is in compliance with this article. Such renewals are not subject to the initial selection procedure or application fee provided for initial applicants in this article. Permits shall expire annually on December 31. If a permit is not timely renewed, a late fee as established by the city council shall be assessed for a subsequent renewal (see Appendix A). Permits which are not renewed within 30 days after expiration shall be deemed cancelled and subject to the original application process.

(e) All fees, including late renewal fees when applicable, shall be nonrefundable and shall be paid to the finance and technology director or designee.
(Ord. No. 2004.16, 4-29-04; Ord. No. 2010.02, 2-4-10)

Sec. 24-21. Appeal.

Any person who wishes to dispute either the denial or revocation of a permit, or the determination that they are liable for any fees under this article may do so by submitting a request for an administrative review hearing in writing no more than ten (10) days after the denial or revocation. The city and the person disputing the denial, revocation or fee shall be given notice of the hearing and an opportunity to be heard. The hearing officer shall establish rules of administration and procedure to ensure the fair and orderly conduct of hearings held pursuant to this section.
(Ord. No. 2004.16, 4-29-04)

Secs. 24-22 – 24-25. Reserved.

DIVISION 2. MOBILE MERCHANTS

Sec. 24-26. Required authorizations.

(a) It shall be unlawful for any person to act within the city as a mobile merchant without first obtaining a permit authorizing such activity.

(b) It shall be unlawful for any person to carry on activity within the city as a mobile merchant unless the vehicle at or adjacent to which sales of tangible personal property are made bears a valid mobile merchant permit prominently displayed within the vehicle.
(Ord. No. 2004.16, 4-29-04; Ord. No. O2014.58, 10-2-14)

Sec. 24-27. Application procedure; required insurance.

(a) Any person desiring a permit to act as a mobile merchant within the city shall submit application on forms prescribed by the city. Required information shall include, but is not limited to, names and residence addresses of all owners, partners, general managers, principal officers, drivers and operators, proposed vending location and hours, products and costs, equipment to be used and signs. The applicant shall also submit a completed form provided by the city agreeing to operate in a manner consistent with a "good neighbor policy." The good neighbor policy shall include as guiding principles all of the following:

(1) Maintaining public safety.

(2) Respecting public and private property.

(3) Managing potential impacts to adjacent or nearby establishments and residents as may be caused by noise, lighting, parking, and trash.

(4) Being accountable, available, and responsive, as reasonable, to community comments and concerns.

(b) In addition to the mobile merchant permit application, any person desiring to act as a mobile merchant within the city shall submit an application for an identification card. Additional applications for identification cards to ensure compliance with section 24-29(g) may also be submitted. The applicant and each individual desiring the required identification card shall also provide three (3) character references, a statement of any prior felony conviction and any prior misdemeanor conviction involving moral turpitude, and any other information which the finance and technology director or designee deems necessary. The individual applicant shall also provide proof of a valid state chauffeur's or driver's license and (if food or drink is to be sold) proof of health clearance from the county health department before issuance of the identification card. The applicants and each individual desiring the required identification card shall submit a full set of fingerprints to the Tempe Police Department for the purpose of obtaining a state or federal, or both, criminal records check pursuant to A.R.S. § 41-1750 and Public Law (PL) 92-544. The Department of Public Safety is authorized to exchange this fingerprint data with the Federal Bureau of Investigation. Fingerprints must be submitted on fingerprint cards provided by the finance and technology director or designee. No identification card shall be issued prior to clearance of such fingerprints by the city. The finance and technology director or his agent may, at his discretion, approve the issuance of an identification card despite record of criminal conviction; provided, that such conviction occurred more than two (2) years prior to the date of application and was listed by the applicant on his application form. If the individual applying for an identification card provides satisfactory evidence that he is under eighteen (18) years of age, fingerprinting shall be waived and the identification card stamped "juvenile". No identification card shall be issued except under authorization of an approved permit to operate as a mobile merchant within the city.

(c) No mobile merchant permit shall be issued until a certification of insurance is received by the City of Tempe with no less than the following limits: $1,000,000 combined single limit per occurrence for bodily injury and property damage, including coverage for contractual liability (including defense expense coverage for additional insureds), personal injury, broad form property damage, products and completed operations, insuring the city against any and all liability

or expense that may be incurred by reason of any accident to any person, persons or property arising from or in any way growing out of the use of the right-of-way by the mobile merchant. The general aggregate limit shall apply separately or the general aggregate shall be twice the required per occurrence limit.

(d) All mobile merchant permits and identification cards shall expire yearly, and a renewal application shall be required for any subsequent year, including fingerprinting where applicable.

(e) It shall be unlawful for any individual to omit required information from any application or to provide false information on any application submitted. Failure to provide required information or falsification of information shall be grounds for disapproval or revocation of any permit or identification card.

(f) A mobile merchant planning to operate multiple mobile sales units may request multiple mobile merchant permits to be issued pursuant to a single application to ensure compliance with section 24-26(b).
(Ord. No. 2004.16, 4-29-04; Ord. No. 2010.02, 2-4-10; Ord. No. O2014.58, 10-2-14)

Sec. 24-28. Revocation of permits and identification cards.

Any mobile merchant permit or identification card may be revoked by the finance and technology director or designee on the basis of information received after issuance concerning criminal record, or on the basis of violations of this article, the city's "good neighbor policy," or any applicable law or for reasons of public health, safety or welfare. Identification cards issued under a revoked permit shall automatically be revoked at the same time, and any identification card shall be revoked upon notification from the permit holder that the identification card holder is no longer associated with the permit holder. Revocation shall be effective on the date set by the city.
(Ord. No. 2004.16, 4-29-04; Ord. No. 2010.02, 2-4-10; Ord. No. O2014.58, 10-2-14)

Sec. 24-29. Prohibited activities.

(a) It shall be unlawful to sell any type of tangible personal property from a vehicle upon any arterial street as defined by ordinance, and it shall be unlawful to sell any type of tangible personal property from a vehicle upon any street within an area bounded by, and including, the streets of Farmer Avenue on the west, College Avenue on the east, University Drive on the south, and Tempe Town Lake on the north, unless otherwise authorized by a special event permit.

(b) It shall be unlawful for any mobile merchant to engage in business operations in any residential area of the city between the hours of 10:00 p.m. and 7:00 a.m.

(c) It shall be unlawful for any mobile merchant to ring bells, play chimes, play recordings or make other noise in any residential area of the city for advertising purposes between the hours of 8:00 p.m. and 8:00 a.m. and between the hours of 1:00 p.m. and 3:00 p.m. and no such noise shall be made when the vehicle is parked. This section shall not be construed as permitting any noise or vibration construed as a public nuisance under chapters 20 or 21 of this code.

(d) No mobile merchant shall claim or attempt to establish any exclusive right to park at a particular street location, and no mobile merchant shall park at or within five hundred (500) feet of any location on a public street for more than four hours within any eight (8) hour period.

(e) It shall be unlawful for any person to sell any type of tangible personal property from any vehicle, stand or other movable or temporary contrivance or by peddling within five hundred (500) feet of any school grounds between that time period commencing one-half (1/2) hour prior to the start of each school day and ending one-half (1/2) hour after school is dismissed. The words "school grounds", as used in this section, shall not include the campus of Arizona State University.

(f) No person shall sell any tangible personal property, including, but not limited to, food or drink, from any vehicle, stand or other movable or temporary contrivance on or within public parks, city property or the public right of way. Provided, however, that the city council may authorize the calling of competitive bids to provide food sales in one or more public parks or on city property and may grant use of space to one or more persons submitting the best bids. Provided further, that a mobile merchant may be authorized by the finance and technology director or designee, upon the recommendation of the community services director or designee, to sell food and drink in any city park not having a permanent concession facility without respect to competitive bid provisions if a private group or organization requests that the specific mobile merchant be permitted to sell to their group during a specified period at a specified location.

(g) It shall be unlawful for any mobile merchant to engage in business operations unless it is staffed by at least one person having an identification card and, upon request by a city employee, the identification card shall be produced for inspection.

(h) Any person or persons guilty of violating any of the provisions of this section shall be deemed guilty of a misdemeanor and punishable as set forth in § 1-7 of this code.
(Ord. No. 2004.16, 4-29-04; Ord. No. 2006.25, 4-6-06; Ord. No. 2010.02, 2-4-10; Ord. No. O2014.58, 10-2-14)

Secs. 24-30 – 24-35. Reserved.

DIVISION 3. KIOSK VENDING

Sec. 24-36. Kiosk vending required authorization, locations and regulations.

(a) It shall be unlawful for any person to act within the city as a kiosk vendor without first obtaining a permit as required herein or applicable permits required by the city authorizing such activity.

(b) Kiosk vending is permitted in vending areas specifically identified by the city.

(c) Kiosk vending is subject to the following restrictions:

(1) All kiosk vending equipment must be located so that it does not impede pedestrian or vehicular traffic;

(2) The vending area must be kept neat, clean and hazard-free during vending

hours. Vendor is responsible for litter pickup within a fifty (50) foot circumference of the vending area. At least one, thirty-two (32) gallon trash container shall be kept on-site during vending hours. Vendor shall remove trash and trash containers off-site daily;

(3) Vending equipment must be removed from the selected locations or stored and secured within the kiosk at any time when not open for sales;

(4) If the proposed kiosk vending area will be within eight (8) feet of an existing property within the downtown area (or within ten (10) feet if located on Mill Avenue or University Drive), the applicant for a kiosk vending permit must be the adjacent property owner;

(5) Signs advertising the product must be approved by city design review staff. Menus of fares with prices must be posted;

(6) Vending operations and equipment are subject to inspection by the city at all times; and

(7) The sale of alcoholic beverages by kiosk vendors is prohibited.

(d) All kiosk vendors shall obtain design approval and building permits pursuant to this code prior to the issuance of a permit as required herein.

(e) The occupation of the city right of way shall be by encroachment permit only, issued by the city engineer pursuant to chapter 29 of this code.
(Ord. No. 2004.16, 4-29-04)

Sec. 24-37. Application procedure; required insurance.

(a) Any person desiring a permit to act as a kiosk vendor within the city shall submit application on forms prescribed by the city to the finance and technology director or designee. Application for an original kiosk vendor permit shall be filed at least sixty (60) days prior to the commencement of the proposed licensing period. Required information shall include, but is not limited to, names and residence addresses of all owners, partners, general managers and principal officers, proposed vending location and hours, products and costs, equipment to be used and signs.

(b) The applicant shall also provide three (3) character references, a statement of any prior felony conviction and any prior misdemeanor conviction involving moral turpitude, and any other information which the finance and technology director or designee deems necessary. If food or drink is to be sold, the individual applicant shall also provide proof of health clearance from the county health department before issuance of the permit. The applicants and agents shall submit a full set of fingerprints to the Tempe Police Department for the purpose of obtaining a state or federal, or both, criminal records check pursuant to A.R.S. § 41-1750 and Public Law (PL) 92-544. The Department of Public Safety is authorized to exchange this fingerprint data with the Federal Bureau of Investigation. Fingerprints must be submitted on fingerprint cards provided by the finance and technology director or designee.

(c) No kiosk vendor permit shall be issued until a certification of insurance is received by the City of Tempe with no less than the following limits: $1,000,000 combined single limit per occurrence for bodily injury and property damage, including coverage for contractual liability (including defense expense coverage for additional insureds), personal injury, broad form property damage, products and completed operations, insuring the city against any and all liability or expense that may be incurred by reason of any accident to any person, persons or property arising from or in any way growing out of the use of the right-of-way by the kiosk vendor. The general aggregate limit shall apply separately or the general aggregate shall be twice the required per occurrence limit.

(d) It shall be unlawful for any individual to omit required information from any application or to provide false information on any application submitted. Failure to provide required information or falsification of information shall be grounds for disapproval or revocation of any permit.
(Ord. No. 2004.16, 4-29-04; Ord. No. 2010.02, 2-4-10)

Sec. 24-38. Revocation of permits.

Any kiosk vending permit may be revoked by the finance and technology director or designee on the basis of information received after issuance concerning criminal record, or on the basis of violations of this article or any applicable law or for reasons of public health, safety or welfare. Revocation shall be effective on the date set by the city.
(Ord. No. 2004.16, 4-29-04; Ord. No. 2010.02, 2-4-10)

Secs. 24-39—24-45. Reserved.

DIVISION 4. SIDEWALK CAFES

Sec. 24-46. Repealed.
(Ord. No. 2004.16, 4-29-04; Ord. No. 2007.82, 12-13-07)

Sec. 24-47. Repealed.
(Ord. No. 2004.16, 4-29-04; Ord. No. 2007.82, 12-13-07)

Sec. 24-48. Repealed.
(Ord. No. 2004.16, 4-29-04; Ord. No. 2007.82, 12-13-07)

Secs. 24-49—25-55. Reserved.

ARTICLE III. SOLICITING AND DOOR-TO-DOOR SALES

DIVISION 1. GENERALLY

Sec. 24-56. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Door-to-door sales permit means the written authorization to act as a door-to-door seller within the city as regulated by this article.

Door-to-door seller means any person who goes uninvited from residence to residence or to only one residence within the city selling or offering to sell any type of service or any type of personal property; provided, that no payment in part or in full is accepted by the seller until the service has been provided or until the tangible personal property has been delivered; and provided further, that other requirements in this article have been met.

Identification card means the card issued to any individual in accordance with provisions of this article, under a specific permit.

Nonprofit permit means the written authorization to act as a nonprofit door-to-door seller.

Nonprofit seller means any organization operated exclusively for educational, religious, charitable, public service, fraternal or other nonprofit purposes which goes uninvited from residence to residence or to only one residence within the city selling or offering to sell any type of service or any type of tangible personal property. The term shall also cover any individual who is or who purports to be a member, officer, representative or agent of such a nonprofit organization.

Person means any individual, proprietor, partner, employee, agent, company, organization, partnership, business trust or corporation whose activities are subject to provisions of this article.

Resident means any individual occupying a residence at the time activities regulated by this article occur.

Solicitor means any person who goes uninvited from residence to residence or to only one residence within the city selling or offering to sell any type of service or any type of tangible personal property and who cannot or will not meet the requirements for a door-to-door seller.

Solicitor's permit means the written authorization to act as a solicitor within the city as regulated by this article.
(Code 1967, § 23-20)

Sec. 24-57. Purposes.

The purposes of this article shall be to protect the health, safety and welfare of residents of the city by means of reasonable investigation and regulation of door-to-door sellers, nonprofit sellers and solicitors and their employees and agents, and to levy fees for identification cards and permits required under this article.
(Code 1967, § 23-21)

Secs. 24-58—24-70. Reserved.

DIVISION 2. PERMITS AND IDENTIFICATION CARDS

Sec. 24-71. Required authorizations and fees.

(a) It shall be unlawful for any person (other than a representative, agent or employee of a holder of a solicitor's permit) to act as a solicitor in the city without first obtaining a permit authorizing such activity. The nonrefundable application fee for a calendar year or portion thereof shall be established by the city council, except that on or after the first day of July the application fee shall be prorated for the remainder of the calendar year (see Appendix A).

(b) It shall be unlawful for any person (other than a representative, agent or employee of a holder of a door-to-door sales permit) to act as a door-to-door seller in the city without first obtaining a permit authorizing such activity. The nonrefundable application fee shall be for a calendar year or portion thereof established by the city council, except that on or after the first day of July, the application fee shall be prorated for the remainder of the calendar year (see Appendix A).

(c) It shall be unlawful for any person to act within the city as a nonprofit seller without first obtaining a permit authorizing such activity. The permit may be issued for any specific period within a calendar year, and no fee shall be required.

(d) It shall be unlawful for any individual to act within the city as a door-to-door seller or solicitor, or as employee, dealer, representative or agent of the same, without first obtaining an identification card covering a calendar year or portion thereof. The fee for each identification card shall be established by the city council (see Appendix A). It shall be unlawful for any individual acting as a door-to-door seller or solicitor to fail to exhibit a valid identification card upon the request of any police officer, finance and technology director or any of his authorized agents, or upon the request of any resident of the city.

(e) It shall be the responsibility of any person receiving a nonprofit permit to have the original permit suitably copied or duplicated and to distribute such copies to the individuals acting as members, employees or agents of the nonprofit seller in making sales calls. It shall be unlawful for any such member, employee or agent to fail to exhibit a copy of a valid permit upon the request of any police officer or upon the request of any resident.
(Code 1967, § 23-22; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Sec. 24-72. Exemptions, fee waivers.

(a) Any person whose activities are regulated exclusively by the state shall be exempted from the provisions of this article.

(b) Any person selling subscriptions for delivery of newspapers to the door of a residence on a regular daily or weekly schedule shall be exempted from the provisions of this article.

(c) Any person providing or offering to provide scheduled delivery of food products to the door of any residence within the city at least once every seven (7) consecutive days shall apply for a permit as a door-to-door seller but the application fee shall be waived. However, the application fee of two dollars ($2) for each identification card shall not be waived.

(d) Any person showing proof that he is under the age of fifteen (15) years may request that the door-to-door seller permit fee, identification card fee and required posting of bond be waived; provided, that his parents or guardians certify in writing that he will sell only in the neighborhood of his own city residence and that such parents or guardians will supervise such activities and will hold the city harmless against any claims or causes of action for property damages or personal injuries caused by or related to such activities.
(Code 1967, § 23-23)

Sec. 24-73. Application procedure.

(a) Any person desiring a permit to act as a door-to-door seller within the city shall submit application in triplicate, together with application fee, to the finance and technology director or his authorized representative. The form of application shall be as prescribed by the finance and technology director and shall require the applicant furnish character or business references and, as to corporate applicants, the names of the principal officers and state of incorporation or, as to other applicants, the names and residence addresses of all owners, partners or managers. The application shall be referred to the police chief or his authorized representative for investigation. The applicants and agents shall submit a full set of fingerprints to the Tempe Police Department for the purpose of obtaining a state or federal, or both, criminal records check pursuant to A.R.S. § 41-1750 and Public Law (PL) 92-544. The Department of Public Safety is authorized to exchange this fingerprint data with the Federal Bureau of Investigation. Fingerprints must be submitted on fingerprint cards provided by the finance and technology director or designee. Approval or disapproval shall be reported within thirty (30) days on the basis of the best information available as to the reputation of the applicant. The finance and technology director or his authorized agent shall issue the permit requested when satisfied as to the accuracy and completeness of information set forth in the application.

(b) No application for door-to-door seller shall be accepted unless the applicant or his authorized employee or representative certifies in writing that no payment will be asked or accepted before the service offered has been provided or the tangible personal property offered for sale has been delivered. In addition, the applicant shall file a surety bond or provide satisfactory evidence of a surety bond in the amount of one thousand dollars ($1,000) times the number of individuals, agents and representatives to be at any time engaged in door-to-door selling in the city on behalf of the applicant, which bond shall guarantee to the city and its residents that all services or tangible personal property represented in its advertising or sales

literature are as orally represented by the seller, and that no payment of any kind will be required or accepted until the service or tangible personal property offered has been delivered. Action on any bond filed may be brought in the name of the city to the use or benefit of any aggrieved resident of the city.

(c) Any person unable or unwilling to meet the requirements for door-to-door seller in respect to either posting of bond or not accepting payment in advance may submit an application for a permit as a solicitor. A solicitor may participate in any activity permissible for a door-to-door seller and may also accept partial or full payment before the service or tangible personal property offered has been provided, providing that no element of fraud or deceit is present in the offer to sell.

(d) Any person desiring a permit to act as a solicitor within the city shall submit application in triplicate, together with application fee, to the finance and technology director or his authorized representative. Required information shall be that deemed necessary by the police chief for complete and thorough investigation of business references and of the personal background of the general manager or other responsible agent signing the application. The applicants and agents shall submit a full set of fingerprints to the Tempe Police Department for the purpose of obtaining a state or federal, or both, criminal records check pursuant to A.R.S. § 41-1750 and Public Law (PL) 92-544. The Department of Public Safety is authorized to exchange this fingerprint data with the Federal Bureau of Investigation. Fingerprints must be submitted on fingerprint cards provided by the finance and technology director or designee. The application and fingerprint card shall be submitted to the police chief or his authorized representative for investigation. A report of approval or disapproval shall be returned within thirty (30) days, but no permit shall be issued without specific police approval.

(e) Any individual desiring an identification card under a door-to-door seller permit shall submit to the finance and technology director or his authorized representative application in triplicate in form prescribed by the finance and technology director, together with application fee and two (2) photos of the applicant.

(f) Any individual desiring an identification card under a solicitor's permit shall submit application in triplicate together with application fee, to the finance and technology director or his authorized representative. Required information shall include the individual's name and mailing address, name and mailing address of the permit holder, three (3) character references, a statement of any prior felony conviction and any prior misdemeanor conviction involving moral turpitude, and any other information which the police chief deems necessary for thorough investigation of character and reputation. The individual applicant shall also provide two (2) satisfactory identification photos and shall be fingerprinted at regularly scheduled times by the police department.

(g) No identification card under a solicitor's permit shall be issued without police approval in writing. The police chief may, at his discretion, approve the issuance of an identification card despite the conviction of a felony or misdemeanor involving moral turpitude; provided, that such conviction occurred more than two (2) years prior to date of application and was listed by applicant on his application.

(h) If the individual applying for an identification card provides satisfactory evidence that he is under eighteen (18) years of age, fingerprinting shall be waived and the identification card stamped "juvenile".

(i) All permits for door-to-door seller and for solicitor and all identification cards issued under such permits shall expire at the end of the calendar year, and completely new applications shall be required for any subsequent year.

(j) Any person desiring a permit as a nonprofit seller shall submit application in triplicate to the finance and technology director or his authorized representative at least fifteen (15) days in advance of intended activity as such within the city. Required information shall be that deemed necessary by the police chief for possible investigation of history and reputation and shall include a statement as to activities and membership of the organization, the purpose for which proceeds are to be used and period for which the permit is desired. The application shall also include background information and three (3) character references of the manager, director, leader or other responsible agent signing the application. The applicants and agents shall submit a full set of fingerprints to the Tempe Police Department for the purpose of obtaining a state or federal, or both, criminal records check pursuant to A.R.S. § 41-1750 and Public Law (PL) 92-544. The Department of Public Safety is authorized to exchange this fingerprint data with the Federal Bureau of Investigation. Fingerprints must be submitted on fingerprint cards provided by the finance and technology director or designee. The permit may be issued if the finance and technology director or his authorized agent is satisfied with the information provided on the application and may be limited to a shorter period than that requested by the applicant.

(k) It shall be unlawful for any individual to omit required information from any application or to provide false information on any application submitted. Failure to provide required information or falsification of information shall be grounds for disapproval or revocation of any permit or identification card.
(Code 1967, § 23-24; Ord. No. 2001.17, 7-26-01; Ord. No. 2002.47, 12-19-02; Ord. No. 2010.02, 2-4-10)

Sec. 24-74. Revocation of permits and identification cards.

Any permit or identification card issued under this division may be revoked by the finance and technology director or his authorized representative upon the recommendation of the police chief for furnishing false information, conviction of a felony or misdemeanor involving moral turpitude, or for a violation of this article. Identification cards issued under a revoked permit shall automatically be revoked at the same time as the permit. Any identification card shall be revoked upon notification from the permit holder that the identification card holder is no longer associated with the permit holder. Revocation shall be effective on the second working day after notice is mailed to the last-known mailing address of the applicant by certified or registered mail.
(Code 1967, § 23-25; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Sec. 24-75. Fees in addition to transaction privilege tax.

Application fees levied in this division shall be in addition to the transaction privilege tax which may be required by chapter 16 of this code. Failure of an applicant or permit holder to comply with that chapter shall be sufficient grounds for denial or revocation of any permit and all identification cards associated with such application or permit.
(Code 1967, § 23-26)

Sec. 24-76. Temporary identification cards.

The finance and technology director or his authorized representative may issue, at his discretion, a temporary identification card as a solicitor for a period of not over sixty (60) days pending full police department clearance under the following circumstances:

(1) The individual is applying for a renewal of an identification card approved for any portion of the prior calendar year and never revoked; or

(2) After thirty (30) days from the date of application, if the police department has been unable during that period to complete its investigation of the individual applicant.

(Code 1967, § 23-28; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Secs. 24-77—24-90. Reserved.

ARTICLE IV. CHARITABLE SOLICITATIONS

DIVISION 1. GENERALLY

Sec. 24-91. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Nonprofit organization means an organization formed and carried on solely for an educational, religious or public service purpose and not for the private profit of its officers, members or owners.

Permit means the written authorization to carry on soliciting for donations as regulated by this article.

Soliciting for donations means asking for gifts or donations of any type on public right-of-way, at any place of business or any residence within the city.
(Code 1967, § 23-30)

Sec. 24-92. Purpose.

The purpose of this article shall be to protect the health, safety and welfare of people living or working within the city and of people visiting the city by means of reasonable investigation and regulation of soliciting for donations within the city.
(Code 1967, § 23-31)

Secs. 24-93—24-105. Reserved.

DIVISION 2. PERMIT

Sec. 24-106. Required authorizations.

(a) It shall be unlawful for any individual or organization to carry on the activity of soliciting for donations within the city except under permit from the finance and technology director or his authorized representative to do so.

(b) It shall be unlawful for any individual to solicit for donations except as authorized agent or representative of a bona fide nonprofit organization as defined in § 24-91 of this code.

(c) It shall be unlawful for any individual soliciting for donations within the city to fail or to refuse to show authorization for such activity upon the request of a police officer, resident or businessman within the city.
(Code 1967, § 23-32; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Sec. 24-107. Application procedure.

(a) Any organization desiring a permit to solicit for donations within the city shall submit application at least fifteen (15) days in advance of the requested starting date to the finance and technology director or his authorized representative. Required information shall be that deemed necessary by the police chief to investigate the background, history and reputation of the applicant and of the responsible official or agent submitting the application. The application and its references may be submitted to the police department for investigation. The applicants and agents shall submit a full set of fingerprints to the Tempe Police Department for the purpose of obtaining a state or federal, or both, criminal records check pursuant to A.R.S. § 41-1750 and Public Law (PL) 92-544. The Department of Public Safety is authorized to exchange this fingerprint data with the Federal Bureau of Investigation. Fingerprints must be submitted on fingerprint cards provided by the finance and technology director or designee. The authorized representative of the finance and technology director may issue a permit upon his own judgment or upon recommendation of the police chief or his authorized representative. However, no permit shall be issued if disapproved in writing by the police chief. No permit shall cover a period greater than one year from date of issuance.

(b) It shall be unlawful for any individual to omit required information from any application or to provide false information on any application submitted. Failure to provide required information or falsification of information shall be grounds for disapproval or revocation of any permit.
(Code 1967, § 23-33; Ord. No. 2001.17, 7-26-01; Ord. No. 2002.47, 12-19-02; Ord. No. 2010.02, 2-4-10)

Sec. 24-108. Personal identification.

Every individual soliciting for donations shall carry a copy of the permit authorizing such soliciting. It shall be the responsibility of the permit holder to make photographic copies or photostats or other suitable copies and to distribute them to responsible individuals doing the actual soliciting.
(Code 1967, § 23-34)

Sec. 24-109. Revocation.

Any permit is subject to revocation by the authorized representative of the finance and technology director upon the recommendation of the police chief, based on false information provided in the application, violation of any portion of this article, or any facts deemed by the police chief to show reasonable danger to the health, safety or welfare of those residing or working within the city. Such revocation shall be effective on the second working day after notice has been mailed by certified or registered mail to the last-known mailing address of the applicant.
(Code 1967, § 23-35; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Secs. 24-110—24-114. Reserved.

ARTICLE V. AGGRESSIVE SOLICITATIONS

Section 24-115. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Aggressive manner means, either individually or as a group:

(1) Intentionally, knowingly or recklessly making any physical contact with or touching another person in the course of the solicitation without the person's consent;

(2) Approaching or following a person before, during or after soliciting if that conduct is intended to or is likely to cause a reasonable person to fear bodily harm to oneself or another, or damage to or loss of property or otherwise be intimidated into giving money or other thing of value;

(3) Continuing to solicit from a person after the person has given a negative response to such soliciting;

(4) Intentionally, knowingly or recklessly obstructing the safe or free passage of the person being solicited or requiring the person to take evasive action to avoid physical contact with the person making the solicitations. Acts authorized as an exercise of one's constitutional right to picket or protest shall not constitute obstructing passage; or

(5) Intentionally, knowingly or recklessly using obscene, abusive or threatening language or gestures intended or likely to cause a reasonable person to fear imminent bodily harm or reasonably likely to intimidate the person being solicited into responding affirmatively to the solicitation.

Automated teller machine means a device, linked to a financial institution's account records, which is able to carry out transactions, including but not limited to, account transfers, deposits, cash withdrawals, balance inquiries, and mortgage and loan payments.

Bank means a bank, credit union or other similar financial institution.

Public transportation vehicle means any vehicle used for the transportation of passengers on scheduled routes on an individual passenger fare-paying basis.

Public area means an area to which the public or a substantial group of persons has access, and includes, but is not limited to, alleys, bridges, buildings, driveways, parking lots, parks, playgrounds, plazas, sidewalks, schools and streets open to the general public, and the doorways and entrances to buildings and dwellings, and the grounds enclosing them.

Solicit means to request an immediate donation or exchange of money or other thing of value from another person, regardless of the solicitor's purpose or intended use of the money or other thing of value. Soliciting shall include using the spoken, written, or printed word, bodily gestures or any other means of communication. Soliciting does not include requesting or accepting payment of the fare on a public transportation vehicle by the operator of the vehicle.
(Ord. No. 97.42, 8-21-97; Ord. No. 2013.15, 2-21-13)

Sec. 24-116. Prohibited Acts.

It shall be unlawful for any person to solicit any money or other thing of value, or to solicit the sale of goods or services:

(1) In an aggressive manner in a public area;

(2) Within fifteen (15) feet of any entrance or exit of any bank or within fifteen (15) feet of any automated teller machine;

(3) In any public transportation vehicle or from persons waiting within fifteen (15) feet of a sign designating a bus stop;

(4) Within fifteen (15) feet of any transit stop or taxi stand;

(5) Immediately adjacent to the entrance of a business in a manner interfering with ingress or egress;

(6) From persons engaging in any financial transaction;

(7) Within ten (10) feet from persons inside a business, including a patio area, without the authorization of the business owner; or

(8) Under false or misleading representations.
(Ord. No. 97.42, 8-21-97; Ord. No. 2013.15, 2-21-13)

Sec. 24-117. Penalty.

A violation of this section is a class 1 misdemeanor. In addition to any other penalties authorized by law, the court may order a person sentenced under this section to perform community service work.
(Ord. No. 97.42, 8-21-97)

Chapter 25

PLANNING AND DEVELOPMENT[1]

ARTICLE I. IN GENERAL

Secs. 25-1—25-15. Reserved.

ARTICLE II. PLANNING AND ZONING COMMISSION[2]

Sec. 25-16. Repealed.
(Code 1967 § 2-2; Ord. No. 2004.42, 1-20-05)

Sec. 25-17. Repealed.
(Code 1967, §§ 2-3—2-5; Ord. No. 2004.42, 1-20-05)

Sec. 25-18. Repealed.
(Code 1967, § 2-6; Ord. No. 2004.42, 1-20-05)

Sec. 25-19. Repealed.
(Code 1967, § 2-7; Ord. No. 2004.42, 1-20-05)

Sec. 25-20. Repealed.
(Code 1967, § 2-8 Ord. No. 2004.42, 1-20-05)

Secs. 25-21—25-35. Reserved.

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[1]**Cross references—**Buildings and building regulations, Ch. 8; Drainage and flood control, Ch. 12; residential development tax, § 16A-40 et seq.; Mobile homes and trailer coaches, Ch. 18; trees and landscaping in public rights-of-way and parks, § 29-36 et seq.; Subdivisions, Ch. 30.

State law reference—Municipal planning, A.R.S. § 9-461 et seq.

Zoning and Development Code reference—Development review commission, Section 1-312.

[2]**Editor's note**—Ord. No. 2004.42 repealed the Planning and Zoning Commission from the City Code and it has been incorporated into the Zoning and Development Code. See Development Review Commission, Section 1-312 of the Zoning and Development Code.

ARTICLE III. NUMBERING OF BUILDINGS AND NAMING OF STREETS

Sec. 25-36. Uniform numbering system established.

There is hereby established a uniform system for numbering buildings fronting on all streets, avenues and public ways in the city, and all houses and other buildings shall be numbered in accordance with the provisions of this article.
(Code 1967, § 8-6)

Sec. 25-37. Base lines for dividing city.

Salt River shall constitute the base line which will divide the city into northern and southern parts. Hereafter, all streets north of this base line and running generally in a northerly-southerly direction shall be considered "North" streets, and likewise all streets south of this base line and running generally in a northerly-southerly direction shall be considered "South" streets. Mill Avenue shall be considered the base line which divides the city into east and west parts. Hereafter, streets east of this base line and running in a generally easterly-westerly direction shall be considered "East" streets and likewise streets west of Mill Avenue and running in a generally easterly-westerly direction shall be considered "West" streets.

(1) Each building north of Salt River and facing a street running in a northerly direction shall carry a number indicating its location north of such base streets.

(2) Each building south of the north-south base line and facing a street running in a southerly direction shall carry a number and address indicating its location south of such base streets.

(3) Each building east of Mill Avenue, and facing a street running in an easterly direction shall carry a number and address indicating its location east of such base street.

(4) Each building west of Mill Avenue and facing a street running in a westerly direction shall carry a number and address indicating its location west of such base street.

(5) All buildings on diagonal streets shall be numbered the same as buildings on northerly and southerly streets if the diagonal runs more from the north to the south, and the same rule shall apply on easterly and westerly streets if the diagonal runs more from the east to the west.

(Code 1967, § 8-7)

Sec. 25-38. Basis for assigning numbers.

The numbering of buildings on each street shall begin at the base line. All numbers shall be assigned on the basis of one number for each twenty (20) feet of frontage along the street. Grid lines, as shown on the property numbering map, indicate the point at which numbers will change from one hundred (100) to the next higher hundred. All buildings on the south of east-west streets and east of north-south streets shall bear odd numbers, and likewise all buildings on the north side of east-west streets and west of north-south streets shall bear even numbers.

(1) Where any building has more than one entrance serving separate occupants, a separate number shall be assigned to each entrance serving an occupant.

(2) The building shall be assigned the number of the twenty-foot interval in which the main entrance of the building falls. In measuring the twenty-foot intervals of street frontage, if the main entrance of the building falls exactly upon the line which divides a twenty-foot interval from the next higher interval, either the number of the lower interval or the number of the next higher interval will be assigned to that entrance.

(3) A multiple-family dwelling having only one main entrance shall be assigned only one number, and separate apartments in the building will carry a letter designation such as A, B, C, in addition to the number assigned to the main entrance of the building.

(4) The duplex houses having two (2) front entrances shall have a separate number for each entrance. If both entrances fall within the same increment, either the preceding number or next highest number shall be used for one entrance number, and the interval number in which the entrances fall shall be used for the other entrance.

(Code 1967, § 8-8)

Sec. 25-39. Buildings facing short streets.

All buildings facing streets not extending through to the base line shall be assigned the same relative numbers as if the street had extended to the base line.

(Code 1967, § 8-8.1)

Sec. 25-40. Directional designation.

In addition to the numbers placed on each house or other building as heretofore provided, all streets, avenues and other public ways within the city are hereby given the following directional designation.

(1) All streets north of Salt River and running in a generally northerly direction are given the direction "North" as part of the street name.

(2) All streets south of Salt River and running in a generally southerly direction are given the direction "South" as part of the street name.

(3) All streets east of Mill Avenue and running in an easterly direction are given the direction "East" as part of the street name.

(4) All streets west of Mill Avenue and running in a westerly direction are given the direction "West" as part of the street name.

(Code 1967, § 8-8.2)

Sec. 25-41. Number assignment; placement on buildings.

(a) There shall be assigned to each house and other residential or commercial building located on any street, avenue or public way in the city, its respective number under the uniform system provided for in this article. When each house or building has been assigned its respective number or numbers, the owner, occupant or agent shall place or cause to be placed upon each house or building controlled by him the number or numbers assigned under the uniform system as provided in this article.

(b) Such numbers shall be placed on all appropriate existing buildings within thirty (30) days after the assignment of a permanent number. Placement on buildings shall conform to Chapter 11, Article II of this code.
(Code 1967, § 8-8.3; Ord. No. 97.14, 11-20-97)

Sec. 25-42. Plat book.

For the purpose of facilitating correct numbering, a plat book of all streets, avenues and public ways within the city showing the proper numbers of all houses or other buildings fronting upon all streets, avenues or public ways shall be kept on file in the office of the public works director. These plats shall be open to inspection of all persons during the office hours of the public works director. Duplicate copies of such plats shall be furnished to the engineer and building inspector by the public works director.
(Code 1967, § 8-8.4; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Sec. 25-43. Duties of public works director.

It shall be the duty of the public works director to inform any applicant of the number or numbers belonging to or embraced within the limits of any such lot or property as provided in this article. In case of conflict as to the proper number to be assigned to any building, the public works director shall determine the number of such building. Final approval of any structure erected, repaired, altered or modified shall be withheld by the community development director until permanent and proper numbers have been affixed to such structure.
(Code 1967, § 8-8.5, Ord. No. 97.20, 4-10-97; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Sec. 25-44. Approval required for new street names.

Everyone submitting a subdivision plat to the development review commission for their approval shall show the proper names of any and all streets and these street designations shall be approved by the development review commission before such new streets are officially named. Street name suggestions may originate with the party submitting the plat under the guidance of the community development director.
(Code 1967, § 8-8.7; Ord. No. 97.20, 4-10-97; Ord. No. 2001.17, 7-26-01; Ord. No. 2006.01, 1-5-06; Ord. No. 2010.02, 2-4-10)

Sec. 25-45. Changing, renaming or naming existing streets.

The mayor and council by resolution may change, rename or name an existing or newly established street within the limits of the city at any time upon recommendation of the development review commission and after consultation with the county court or county planning commission, if any, and any other governmental agency directly affected thereby.
(Code 1967, § 8-8.8; Ord. No. 2006.01, 1-5-06)

Secs. 25-46—25-60. Reserved.

ARTICLE IV. OFF-SITE IMPROVEMENTS

Sec. 25-61. Definitions.

For the purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them in this section, unless the text clearly indicates otherwise:

Off-site improvements means those required improvements in the public right-of-way and shall include, but not be limited to, asphaltic concrete surfacing, aggregate base, curb and gutter, valley gutters, concrete sidewalks, water mains, fire hydrants, sanitary sewers, storm drains and irrigation facilities when required.

Redeveloped means major additions or major alterations to existing structures, and shall include new structures on parcels of land having existing structures situated thereon.
(Code 1967, § 31-1)

Sec. 25-62. Approval of plans prerequisite to issuance of building permit.

No building permit shall be issued by the community development department until plans are submitted indicating that off-site improvements are planned for the project in conformance with city standards and requirements. These off-site improvement plans shall be submitted with all other building plans and applications. Building plans shall be approved in writing by the community development department. Off-site improvement plans shall be approved in writing by the public works department. Approval of both departments is required prior to the issuance of a building permit.
(Code 1967, § 31-2; Ord. No. 97.20, 4-10-97; Ord. No. 2010.02, 2-4-10)

Sec. 25-63. Bond or deposit.

(a) The community development department shall deny final approval and certificate of occupancy of any building until the required off-site improvements are completed and have been inspected and approved by the public works department, unless performance of the off-site improvements is guaranteed by a performance bond, approved by the city attorney and the public works director, or a cash deposit with the finance and technology director for a sum which shall be in an amount fixed by the public works director.

(b) The performance bond or cash deposit shall be returned to the depositor upon the approval of the public works department subsequent to the completion of the off-site improvements. It is further provided that the performance bond or cash deposit, or a portion thereof, the amount of such portion to be determined by the public works director, may be retained by the city as compensation for performing the work required in the approved off-site improvement plans; provided, that the permittee shall have failed, or refused, to install the work within thirty (30) days after receipt of a notice in writing by the public works director.
(Code 1967, § 31-3; Ord. No. 97.20, 4-10-97; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.01, 2-4-10)

Sec. 25-64. Temporary waivers.

If any of the off-site improvements cause a hardship on the city, or it is not practical to construct the improvements because of the pending formation of an improvement district, the public works director may temporarily waive the off-site improvements upon the property owners signing a contract with the city to accept an improvement district assessment or to construct the improvements within thirty (30) days after receipt of a notice in writing by the public works director.
(Code 1967, § 31-4; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.01, 2-4-10)

Secs. 25-65—25-80. Reserved.

ARTICLE V. WATER AND SEWER EXTENSIONS TO NEWLY DEVELOPED AREAS[3]

Sec. 25-81. Policy.

There is hereby established as set forth in this article a policy and orderly program for extension of the services and facilities of the city water and sewer systems to serve and provide for newly developed areas and subdivisions within the city and those areas and subdivisions outside of the city for which city water or sewer service is desired and available.
(Code 1967, § 31-5)

Sec. 25-82. Applicability.

The elements of the extension policy and program stated in this article shall apply to extension of the city water and sewer systems.
(Code 1967, § 31-6)

Sec. 25-83. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Cost means the construction contract price.

Developer-owner means any person engaged in the development of one or more parcels of land and contracting for a city water or sewer system extension.

Main means any water line not exceeding twelve (12) inches in diameter or any sewer line not less than eight (8) inches in diameter which constitutes or will constitute part of the city water or sewer system.

Participating charge means the proportionate share of the cost (construction contract price) based on benefits derived in accordance with standards determined by the public works director and approved by the city council for any existing main.
(Code 1967, § 31-7; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Sec. 25-84. Plans, specifications.

Upon development of any property, area or subdivision within the city or of any property, area or subdivisions outside of the city for which city water or sewer service is desired and available, all plans and specifications for water and sewer systems shall be prepared by a professional engineer, registered in the state, and in accordance with the city public works department standards and specifications.
(Code 1967, § 31-8)

[3]**Cross references—**Sewers and sewage disposal, Ch. 27; Water, Ch. 33.

Sec. 25-85. Agreement between city and developer-owner.

Before the extension of any water or sewer main shall be made to serve a subdivision, platted or unplatted property, or any existing main tapped to provide service for any individual or unplatted property, the developer-owner desiring such service shall execute an agreement with the city which shall include the following:

(1) A warranty of workmanship and material for mains and facilities installed which shall run to the benefit of the city for a period of at least one year from the date of acceptance by the city;

(2) A diagram of all property which may be served by any main to be installed;

(3) A statement that the city acquires ownership of any main and appurtenances upon completion and acceptance of the work by the city;

(4) A statement that the city's cost for inspecting such work shall be paid by the developer or owner;

(5) A statement of the developer-owner's proportionate share of the cost for previously installed mains; and

(6) A statement of the maximum possible reimbursement that may accrue to the developer-owner for the cost of mains to be installed by him but from which others may be served. If others are served, a participating charge will be made at the time of their development.

(Code 1967, § 31-9)

Sec. 25-86. Financing—Generally.

The following provisions related to financing the extension of water and sewer system mains may be applicable to mains to serve individuals, unplatted areas and subdivisions:

(1) When an existing main will serve the water or sewer system being created for the subdivision or platted area, any participating charges must be deposited with the city prior to start of construction of the proposed development.

(2) Where an existing main is to be tapped, a participating charge based upon that portion of the property to be developed shall be placed on deposit with the city prior to tapping the existing main.

(3) No person shall be permitted to extend service from his tap to adjacent property owned by someone else or to property for which a participating charge has not been advanced and deposited with the city without written approval of the city.

(4) The city will establish a separate account for each reimbursement agreement for the collection of participating charges and reimbursements to the party who financed the installation of the main. Sums collected shall be treated as trust funds to be paid upon receipt. In no event will the sums reimbursed exceed the contract price for the installation of the main.

(5) The reimbursement agreement shall state to whom reimbursement shall be made and shall include a diagram of the property from which reimbursements are contemplated. Should the property or any portion thereof not be served by the main or mains installed under the agreement, the developer-owner will not be reimbursed for the proportionate share of the main cost otherwise due from the property.

(6) Any developer-owner may assign the benefits arising out of any water or sewer agreement with the city; provided, that any such assignment shall not relieve the developer-owner from his duties and obligations under the agreement.

(7) Any agreement providing for reimbursement of developer-owners by subsequent and adjacent developer-owners shall run for a maximum period of twenty (20) years after execution of the agreement and thereupon terminate.

(8) Water mains larger than twelve (12) inches in diameter shall be considered transmission mains and, therefore, a city obligation. Sewer mains larger than twelve (12) inches in diameter shall be a city obligation unless necessary to serve the developer-owner and to satisfy city and state health department requirements, which mains shall be the obligation of the developer-owner.

(9) An individual service connection to any transmission water or trunk sewer main may be permitted upon approval of the public works director and payment of a front-foot charge based on current costs for six (6) inch water mains or eight (8) inch sewer mains. Should the requested water connection exceed six (6) inches or sewer connection exceed eight (8) inches, the front-foot charge shall be based on current cost for main of same diameter as connection.

(10) The city shall be responsible for installation of permanent lift stations, while developer-owners shall be responsible for installation of temporary lift stations.

(11) The city shall be responsible for servicing temporary seepage pits where a sewer trunk system is not yet constructed.

(12) The city shall be responsible for providing and maintaining sewer outfall and interceptor mains but may require developer-owners to pay their proportionate share of the cost of the mains, as may be established by the city.

(Code 1967, § 31-10; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Sec. 25-87. Same—Hardship cases.

(a) If a bona fide hardship exists, the sewer and water participating charges for residential properties may be paid to the city in twelve (12) equal installments added to the monthly water bill as a service charge; provided, that in the event of a default in any installment, service or utility charge the city shall discontinue service on the tenth day immediately following the day of default.

(b) A bona fide hardship exists when the gross annual income per household is equal to or less than the income criteria listed below and when certified in writing by the filing of an affidavit with the finance and technology director:

Household size	*Income*
2	$2,400.00
3	3,000.00
4	3,600.00
5	4,200.00
6	4,800.00
7	5,400.00
8	6,000.00
9	6,600.00
10	7,000.00
11	7,800.00
12	8,400.00
13	9,000.00

For families with more than thirteen (13) members, add six hundred dollars ($600) for each additional member in the family.
(Code 1967, § 31-10.1; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Secs. 25-88—25-100. Reserved.

ARTICLE VI. IMPROVEMENT OF STREETS PRIOR TO DEVELOPMENT OF ADJACENT PROPERTY

Sec. 25-101. Purpose.

The provisions of this article shall be applicable when the city council determines that certain streets are necessary before the development of property and provides a procedure for the installation of certain streets which may or may not constitute the entire off-site improvement requirements of the developer at the time of development of his property. This procedure basically consists of the improvement of short stretches, portions or reaches of streets to alleviate a condition deemed undesirable by the city council.
(Code 1967, § 31-17)

Sec. 25-102. Definitions.

For purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them in this section, unless the text clearly indicates otherwise:

Cost means the actual cost of:

(1) Construction of the public street improvements as determined by the construction contract price;

(2) Inspection and permit fees;

(3) Engineering fees required for the preparation of plans and specifications;

(4) Other incidental fees required to complete the improvements.

Development includes construction of residential, commercial or industrial buildings or structures or major additions or alterations to existing structures and includes new buildings or structures on property having existing buildings or structures situated on such property. When such property is zoned for agricultural or single-family residential use at the time of assessment, development shall also require a change of use or purpose.

Property owner means the individual, corporation, partnership, trust or other legal entity that owns property adjacent to the street right-of-way.

Right-of-way means land which by deed, conveyance, agreement, easement, dedication, usage or process of law is reserved for or dedicated to the general public for street, highway, alley, public utility, pedestrian walkway, bikeway or drainage purposes.

Street improvements includes but is not limited to asphaltic concrete surfacing, aggregate base, portland cement concrete, curb and gutters, sidewalks, or valley gutters, storm drainage facilities, and irrigation tiling.

Streets means the full width of the right-of-way of any road, street, highway, alley, land or pedestrian walkway used by or for the general public, whether or not such road, street, highway, alley, land or pedestrian right-of-way has been improved or accepted for maintenance by the city. (Code 1967, § 31-18)

Sec. 25-103. Assessment policy.

(a) The city council may determine that certain streets within the city be constructed or improved prior to development of the property adjacent to such streets.

(b) If deemed necessary by the council, the council may order such streets constructed or improved at city expense. Such expense shall be assessed against the adjoining property subject to the following:

(1) The assessment of property, if adjacent arterial streets are involved, shall not exceed the cost of improving more than one-half of the width, not to exceed thirty-four (34) feet, nor more than one thousand (1,000) lineal feet of such adjacent arterial street.

(2) Any parcel of land which at the time of assessment is used for single-family residential use and the width of which does not exceed two hundred (200) lineal feet shall not be assessed greater than one-half the costs of a residential street.

(3) The assessment of property shall not exceed the actual costs incurred by the city at the time of construction.

(Code 1967, § 31-19)

Sec. 25-104. Hearing procedure; determination of necessity.

(a) The city council, at a public hearing, shall determine the necessity of street improvements if the cost thereof is to be assessed against adjacent property. Notice of the hearing shall be given to the owners, and other affected persons who would be assessed for the costs of improvements, by regular mail no less than ten (10) days prior to the date of the hearing. The notice of hearing shall contain:

(1) A description of the proposed street improvements;

(2) The estimated cost of assessment for each affected parcel of property;

(3) The date, time and place that the city council shall consider the necessity of improvement and adoption of a resolution of intention. Notice shall also be published in a daily newspaper in five (5) successive issues and, in addition, shall also be conspicuously posted along the line of the proposed improvement at least ten (10) days prior to the hearing on necessity of the improvements.

(b) The property owners and any other persons directly interested in the work or in the assessment may, prior to the time fixed for the hearing, file in the office of the city clerk a written objection, briefly specifying the grounds for objection.

(c) At the time of public hearing, the city council shall hear and pass upon any objections to the proposed improvements, and its decision shall be final and conclusive. It may modify the extent of the proposed improvements and proceed without the necessity for republishing, reposting and remailing new notices.

(d) At the conclusion of the hearing, the city council may pass its resolution of intention directing that plans, specifications and estimates of the cost and expenses of the proposed improvements be prepared by the city engineer and filed with the clerk and order that a call for sealed bids be made.

(e) Upon completion of the improvements, the council shall by resolution, at a public hearing, determine the cost of the improvements and assess against the properties adjacent to the street improvement the total amount of the costs and expenses of the work in accordance with § 25-104, paragraph (a)(2). Notice of this public hearing shall be given to the property owner, and other affected persons who would be assessed for the costs of improvements, by regular mail at least ten (10) days prior to the date of the hearing. This notice shall contain:

(1) A description of the street improvements;

(2) The amount of the proposed assessment for each affected parcel of property.

(f) The property owners and any other persons directly interested in the work or in the assessment who have any objection to the legality of the assessment or to any of the previous proceedings connected therewith or who claim that the work has not been performed according to the contract, may, prior to the time fixed for the hearing, file in the office of the city clerk a written notice briefly specifying the grounds for objection. At the time fixed for the hearing, or at any time thereafter to which the hearing may be postponed, the council shall hear and rule upon the objections. The decision of the council shall be final and conclusive as to all errors, informalities and irregularities which the council might have remedied or avoided at any time during the progress of the proceedings.

(g) The council's resolution shall provide that any assessments remaining unpaid shall be paid prior to or at the time of the development of the assessed property.

(h) The resolution declaring the assessment and describing the properties against which the assessments are imposed shall be recorded in the office of the county recorder. When so recorded, the amount so assessed shall be a lien upon the properties assessed for ten (10) years thereafter or until such assessments are paid, whichever first occurs, and such recording shall be notice to all persons interested in the contents of the record.

(i) Any assessment made under this section shall abate if the property has not been developed within ten (10) years of the assessment.

(j) When it is necessary to improve a full street and sufficient right-of-way is not available, the city engineer may obtain the right-of-way upon terms that are just to the property owner and the city, including assumption by the city of all or part of the costs of street improvements.
(Code 1967, § 31-20)

Sec. 25-105. Collecting unpaid assessments at time of development.

At the time of development of the property adjacent and abutting such improvements, the city council shall fix, levy and assess the amount to be repaid upon such property and collect the amounts of such improvements as county taxes are collected. All statutes providing for the levy and collection of state and county taxes, including collection of delinquent taxes and sale of property for nonpayment of taxes are applicable to the assessments provided for in this article. (Code 1967, § 31-21)

Secs. 25-106—25-119. Reserved.

ARTICLE VII. REQUIREMENTS FOR PLACEMENT OF OVERHEAD UTILITY LINES UNDERGROUND

Sec. 25-120. Definitions.

In this article, unless the context otherwise requires:

Communication lines means any line that provides one or two way transmissions by whatever means conveyed over lines in the public right-of-way including but not limited to transmissions of voice, video or data or anything of similar nature by which thought, idea or information is intended to be conveyed.

Developer shall be deemed to be any individual, firm, corporation, partnership, association, syndication, trust, governmental agency, or other legal entity that is responsible for the development or redevelopment of land that creates any demand for any utility service or causes alteration of existing utility services.

Development/redevelopment shall refer to either initial construction on previously vacant land, or the cumulative expansion (since effective date of this article) of greater than twenty-five percent (25%) of the building floor area existing or approved at the time of effective date of this article, or the cumulative alteration (since effective date of this article) at a cost exceeding fifty percent (50%) of the current appraised value of the structure with the exception of an existing detached, single family dwelling.

Existing utility poles and lines means such poles, wires, aerial cables and any other related facilities that are in place and in operation within ninety (90) days of the effective date of this article.

New utility poles and lines means such poles, wires, aerial cables and other related facilities that are not in place and in operation within ninety (90) days as of the effective date of this article.

Off-site shall refer to easements and street rights-of-way within the development and adjacent to the development.

On-site shall refer to the individual lots, parcels, tracts, etc., of the development.

Power line extensions refers to those primary distribution lines that are to be extended through a developed or undeveloped area.

Primary distribution line means an electric line used for electrical distribution or electrical feeder, single-phase or three-phase, having a voltage rating of twelve thousand five hundred (12,500) volts or less.

Secondary and service lines means utility lines that provide electrical and communications service to commercial, industrial, residential, and public use areas.

Transmission line means an electric line used for the bulk transmission of electricity between generating or receiving points and major substations or delivery points, having a voltage rating greater than twelve thousand five hundred (12,500) volts, including multi-functional static ground wire.

Underground (undergrounding) means the placement of utility lines below ground, with the removal of above ground poles, wires, and structures as applicable.

Utility company shall refer to companies, corporations, and municipalities that undertake distribution and transmission of electricity, telephone, telegraph, radio, television, or telecommunications, or any other communications over communication lines.

Utility poles and lines shall refer to the poles, structures, wires, aerial cables and related facilities used in the distribution of electricity or communication lines.
(Ord. No. 88.85, 1-12-89; Ord. No. 2000.14, 6-8-00; Ord. No. 2008.13, 4-3-08; Ord. No. O2014.30, 7-31-14)

Sec. 25-121. Permits for new or relocated overhead lines or utility poles.

New or relocated overhead lines or utility poles shall not be installed unless a utility permit is granted by the city engineer.
(Ord. No. 88.85, 1-12-89)

Sec. 25-122. Undergrounding of overhead utility lines.

(a) All new or existing utility lines fronting onto the on-site development/redevelopment, other than transmission lines, shall be placed underground in conjunction with a development/redevelopment project (other than an existing detached, single family dwelling) that has been submitted for approval under the provision of the Tempe City Code. This requirement shall also apply to primary distribution lines and all communication lines, including underbuild on transmission poles. If there is a deferment or a waiver, new aerial communication lines, including upgraded replacement lines, will not be allowed to be underbuilt on existing utility poles, except for communication lines installed on transmission poles in the static neutral position. The required undergrounding shall be completed prior to approval and occupancy of the project.

(b) The (re)developer or owner of a (re)development project shall be responsible to make necessary arrangements with the affected utility companies for the installation of required underground facilities, including arrangements for the payment of any cost, as one of the conditions of plan approval. Nothing contained herein is intended to obligate a providing utility company to install such underground facilities without reimbursement except where the utility company is acting as a (re)developer.

(c) In those instances where poles to be removed include street lights, the street lights will be replaced with freestanding poles and luminaries by the (re)developer in accordance with the approved street light standards or agreements of the serving utility.

(d) Where utility lines are to be installed, said lines shall be installed underground where existing utilities are already underground. Previously installed lines shall be undergrounded in

concert with utilities at the time the facilities are undergrounded. No additional poles or longer poles will be permitted in the streets or public right-of-way for any new aerial lines. If the utility company installs aerial lines on existing poles as provided herein, the utility company shall bury its lines if such poles are removed and not replaced in kind. The undergrounding requirement shall also apply to all situations where utility companies plan a new or upgraded system that results in more conductors or lines on a pole. Individual pole mounted equipment shall not be considered an upgrade, such as transformers, switches, splice cases and capacitor banks. The cost for this undergrounding is to be borne by the affected utility company. If there is a deferment or a waiver, all new aerial communication lines, including upgraded replacement lines, will not be allowed to be underbuilt on existing utility poles except for lines installed in the static neutral position.

(e) The undergrounding requirement shall apply to all situations where a governmental agency is acting as a (re)developer or has initiated a construction effort which requires the relocation of existing overhead utility lines. Nothing contained herein is intended to obligate a providing utility company to install such underground facilities without reimbursement from the governmental agency for any costs in excess of those not already the obligation of the utility company.

(f) Where utility lines are required to be placed underground due to a combination of needs generated by (re)development, utility system upgrade, and governmental improvement projects, there shall be an equitable sharing of the cost of that undergrounding effort.

(g) The undergrounding requirement shall not apply to the normal maintenance and repair of existing utility poles and lines. Replacement poles shall not be higher than the existing pole, with the exception of a wood pole being replaced with a steel pole that is closest in height of the wood pole. Temporary overhead line installations used to facilitate construction projects, maintenance activities or emergency restoration of power and communications will be allowed subject to approval of the city engineer.

(h) The undergrounding requirements shall apply regardless of the existence of easements for overhead lines.

(i) Equipment appurtenant to the underground facilities, such as surface-mounted transformers, pull boxes, pedestal cabinets, service terminals, telephone splice closures, concealed ducts, or other similar on-the-ground facilities normally used with or as part of an underground utility system, may be maintained above ground. The city maintains the right to approve the location and appearance of all surface-mounted communication equipment.

(j) The undergrounding requirements of this article shall not apply to electrical transmission lines.

(k) To prevent unnecessary disruption and damage to streets, right-of-way, and other property, the installation of lines shall be accomplished concurrently in the new subdivisions, and use the same trench as other communications, electric and other permanent services to structures. (Ord. No. 88.85, 1-12-89; Ord. No. 2000.14, 6-8-00; Ord. No. 2008.13, 4-3-08; Ord. No. O2014.30, 7-31-14)

Sec. 25-123. Deferments of undergrounding.

(a) Deferment of undergrounding off-site lines may be requested from the city engineer for a (re)development with small frontage, where the cost is substantially more per unit length than it would otherwise be if a longer length (usually a minimum of six hundred sixty (660) feet), including the (re)development frontage, were being undergrounded at the same time. At all times, on-site lines shall be placed underground.

A request for deferment shall be requested in writing to the city engineer and include the following:

(1) The (re)developer shall procure from the appropriate utility companies a reliable estimate of the current cost for undergrounding what is required along the (re)development frontage, including new and existing lines in the adjacent off-site frontage.

(2) The (re)developer shall procure from the appropriate utility companies a reliable estimate of the current cost for undergrounding a longer, more practical length that includes the (re)development frontage (usually a minimum of six hundred sixty (660) feet).

(3) If the project involves improvements in the public right-of-way (bike paths, sidewalks, landscaping, etc.) and deferment of undergrounding will involve costs of future restoration of those improvements, the (re)developer shall furnish a reliable estimate of such future restoration costs in current dollars.

(b) In reviewing a request for deferment, the city engineer shall consider the costs of installing overhead utilities, the cost of undergrounding the utilities, and the status of development in the area affected by the request.

(c) If deferment is authorized by the city engineer, the (re)developer shall deposit with the city a sum sufficient to cover all deferred construction required herein. Monies received shall be used by the city for undergrounding utilities associated with (re)developments within the city boundaries.

(d) Utility companies may request deferment of undergrounding for power or communication line extensions through undeveloped areas. The request with justification shall be submitted to the city engineer. No deferred compensation fees will be required for this type of deferment.

(e) If deferment is denied by the city engineer, the (re)developer or utility company may appeal the city engineer's decision to the city council.

(f) If deferment is approved by the city engineer, an interested party who is affected by the decision may appeal the decision to the city council.
(Ord. No. 88.85, 1-12-89; Ord. No. O2014.30, 7-31-14)

Sec. 25-124. Waiver of undergrounding.

(a) The requirement for undergrounding may be waived for the following reasons:

(1) When the (re)developer or utility company can show that the costs are unreasonably disproportionate to the costs for the proposed (re)development or utility company project.

(2) New utility poles and wires erected for purely temporary purposes, such as providing temporary building construction power, emergency power, telephone service or the furnishing of power to temporary outdoor activities. A permit for such temporary use shall be obtained from the city. The length of the temporary use shall be specified in the permit and may not exceed twelve (12) months. An additional six (6) month permit may be issued upon a finding of necessity by the city.

(3) Poles or luminaries, but not wires or other conduits, used exclusively for street lighting.

(b) Requests for a waiver to the undergrounding requirements shall be submitted in writing to the city engineer.

(c) In reviewing a request for waiver, the city engineer shall consider the cost of installing overhead utilities, the costs of undergrounding the utilities, and the status of development in the area of the request.

(d) If a waiver is denied by the city engineer, the (re)developer or utility company may appeal the city engineer's decision to the city council.

(e) If a waiver is approved by the city engineer, an interested party who is affected by the decision may appeal the decision to the city council.
(Ord. No. 88.85, 1-12-89; Ord. No. O2014.30, 7-31-14)

Sec. 25-125. Waiver for alternate plan.

The city council may waive portions or all of this article when a developer, utility company or governmental agency presents an alternate plan, which must provide greater public benefit than would be accomplished by a strict application of this article.
(Ord. No. 88.85, 1-12-89; Ord. No. 2012.14, 3-22-12)

Sec. 25-126. Penalty for violation.

Any person, developer, or utility company firm or corporation who shall violate any of the provisions of this article shall be fined an investigative assessment fee as outlined in section 29-18 and Appendix A section 29-19 engineering fees. Each day of violation which is continued shall be a separate violation. In addition, any permits will be either revoked or held until such remedies are completed. These assessments shall be in addition to and not exclusive of all other remedies provided by law.
(Ord. No. 88.85, 1-12-89; Ord. No. O2014.30, 7-31-14)

Secs. 25-127—25-130. Reserved.

ARTICLE VIII. OUTDOOR LIGHT CONTROL[4]

Sec. 25-131. Repealed.
(Ord. No. 90.02, 2-22-90 Ord. No. 2004.42, 1-20-05)

Sec. 25-132. Repealed.
(Ord. No. 90.02, 2-22-90; Ord. No. 97.14, 11-20-97; Ord. No. 2004.42, 1-20-05)

Sec. 25-133. Repealed.
(Ord. No. 90.02, 2-22-90; Ord. No. 97.20, 4-10-97; Ord. No. 2001.17, 7-26-01; Ord. No. 2004.42, 1-20-05)

Sec. 25-134. Repealed.
(Ord. No. 90.02, 2-22-90; Ord. No. 2004.42, 1-20-05)

Sec. 25-136. Repealed.
(Ord. No. 90.02, 2-22-90; Ord. No. 2004.42, 1-20-05)

Sec. 25-137. Repealed.
(Ord. No. 90.02, 2-22-90; Ord. No. 93.04, 2-11-93; Ord. No. 2004.42, 1-20-05)

Sec. 25-138. Repealed.
(Ord. No. 90.02, 2-22-90; Ord. No. 2004.42, 1-20-05)

Sec. 25-139. Repealed.
(Ord. No. 90.02, 2-22-90; Ord. No. 97.20, 4-10-97; Ord. No. 2001.17, 7-26-01; Ord. No. 2004.42, 1-20-05)

Sec. 25-140. Repealed.
(Ord. No. 90.02, 2-22-90; Ord. No. 97.20, 4-10-97; Ord. No. 2001.17, 7-26-01; Ord. No. 2004.42, 1-20-05)

Sec. 25-141. Repealed.
(Ord. No. 90.02, 2-22-90; Ord. No. 97.20, 4-10-97; Ord. No. 2001.17, 7-26-01; Ord. No. 2004.42, 1-20-05)

Sec. 25-142. Repealed.
(Ord. No. 90.02, 2-22-90; Ord. No. 97.20, 4-10-97; Ord. No. 2001.17, 7-26-01; Ord. No. 2004.42, 1-20-05)

Sec. 25-143. Repealed.
(Ord. No. 90.02, 2-22-90; Ord. No. 2004.42, 1-20-05)

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[4]**Cross references—**Advertising and signs, Ch. 3; Buildings and building regulations, Ch. 8.

Editor's note—Ord. No. 2004.42 repealed Article VIII, Outdoor Light Control from the City Code and it has been incorporated into the Zoning and Development Code. See Part 4, Chapter 8, Lighting, of the Zoning and Development Code.

Sec. 25-144. Repealed.
(Ord. No. 90.02, 2-22-90; Ord. No. 97.20, 4-10-97; Ord. No. 2001.17, 7-26-01; Ord. No. 2004.42, 1-20-05)

Sec. 25-145. Repealed.
(Ord. No. 90.02, 2-22-90; Ord. No. 2004.42, 1-20-05)

Chapter 26

POLICE[1]

ARTICLE I. IN GENERAL

Sec. 26-1. Definitions.

For the purposes of this chapter, the following terms, phrases, words and their derivations shall have the meanings respectively ascribed to them by this section, unless the context clearly indicates a different meaning:

Chief of police means the chief of police of the police department of the city or his designated representative.

Civilian traffic investigator means an employee of the police department who is empowered to investigate traffic accidents and enforce state statutes and city ordinances relating to traffic laws if the violation is related to a traffic accident.

Police aide means a volunteer or paid employee of the police department of the city empowered to enforce certain ordinances of the city pursuant to Arizona Revised Statutes, § 28-627(E).

Transit enforcement aide means a paid employee of the police department or an employee of a private entity which has entered into a contract with either the police department or a transit provider on behalf of the city.
(Code 1967, § 29-38; Ord. No. 88.55, § 1, 11-10-88; Ord. No. 2008.36, 8-14-08)

Editors note—Effective 10-1-97, A.R.S. § 28-627 was amended and subsection (D) was renumbered to (E).

Sec. 26-2. Chief to appoint, regulate aides.

The chief of police is hereby authorized to appoint police aides in compliance with Ordinance No. 636 of the city and any applicable regulations promulgated by the chief of police and to promulgate regulations pertaining to the appointment and qualifications of police aides.
(Code 1967, § 29-39; Ord. No. 88.55, § 1, 11-10-88)

[1]**State law reference**—Police departments generally, A.R.S. § 9-901 et seq.

Sec. 26-3. Powers of aides.

(a) A police aide shall be employed by the police department and shall be empowered to commence an action or proceeding before a court or judge for any violation of any ordinance of the city regulating the standing or parking of vehicles, and shall possess such other powers as may be incidental thereto. This section shall not be construed to grant to any police aide other powers or benefits to which peace officers of the state are entitled.

(b) Municipally approved private contractors who are contracted by the police department shall be empowered to commence an action or proceeding before a court or judge for any violation of any ordinance of the city regulating the standing or parking of vehicles, and shall possess such other powers as may be incidental thereto. This section shall not be construed to grant to any municipally approved private contractor other powers or benefits to which peace officers of the state are entitled.
(Code 1967, § 29-40; Ord. No. 88.55, § 1, 11-10-88; Ord. No. 2010.34, 9-16-10)

Sec. 26-4. Powers of civilian traffic investigators.

A civilian traffic investigator may be employed by the police department and shall be empowered to:

(1) Investigate traffic accidents within the city; and

(2) Commence an action or proceeding before a court or judge for any violation of a state statute or local ordinance relating to traffic laws, providing that such violation is related to a traffic accident within the city.
(Ord. No. 88.55, § 1, 11-10-88)

Sec. 26-5. Powers of transit enforcement aides.

Transit enforcement aides are empowered to enforce provisions of this code related to fare enforcement and rail security as defined in Chapter 22, Article VIII.
(Ord. No. 2008.36, 8-14-08)

Secs. 26-6—26-20. Reserved.

ARTICLE II. POLICE RESERVE

Sec. 26-21. Definitions.

For the purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section, unless the context clearly indicates a different meaning:

Reserve police officer means an adult person appointed as a reserve police officer by the police chief at his discretion, under the authority of this article.
(Code 1967, § 29-12)

Sec. 26-22. Establishment.

There is hereby established in and for the city a police reserve system.
(Code 1967, § 29-13)

Sec. 26-23. Purpose.

The purpose of the appointment of reserve police officers is to reserve the public peace and to promote general welfare of the city by giving authority to certain persons to assist regular police officers of the city in enforcing city ordinances and state statutes.
(Code 1967, § 29-14)

Sec. 26-24. Appointment; limitations of powers.

The police chief is hereby authorized to appoint adult residents of the county to be reserve police officers. Such officers shall serve under rules and regulations promulgated by the police chief and approved by the city council; but in no event shall such officers have powers superior to those of private citizens unless such officers be acting as reserve police officers while under the general supervision of regular police officers of the city who are themselves on duty.
(Code 1967, § 29-15)

Sec. 26-25. Qualifications.

The police chief shall determine such additional qualifications for appointment and duty as a reserve police officer and shall pass on all applications for appointment as a reserve police officer.
(Code 1967, § 29-16)

Sec. 26-26. Oath.

Every person appointed by the police chief as a reserve police officer shall be sworn to faithful performance of his required duties as outlined by the police chief.
(Code 1967, § 29-17)

Sec. 26-27. Training period.

The police chief shall conduct a period of preassignment training for reserve police officers sufficient to enable such officers to properly and adequately perform their required duties. Further, the police chief may require such additional continuing training as he may find necessary.
(Code 1967, § 29-18)

Sec. 26-28. Assignment of duties.

The police chief shall have full discretionary authority to assign reserve police officers to such duties as shall be best suited to preserve the public peace and to promote general welfare of the city.
(Code 1967, § 29-19)

Sec. 26-29. Designation of supervisor.

The police chief shall be the sole supervisor of the duties of reserve police officers, but may delegate such authority to regular police officers as is necessary for the proper functioning of the police reserve system.
(Code 1967, § 29-20)

Sec. 26-30. Compliance with applicable regulations.

Reserve police officers shall adhere to and be governed by the rules and regulations laid down for the guidance of regular police officers insofar as such rules and regulations are applicable to and consistent with the special class of duty prescribed for reserve police officers by the police chief. Reserve police officers shall also comply with all other applicable ordinances, rules and regulations adopted by the city council and as instructed by the police chief.
(Code 1967, § 29-21)

Sec. 26-31. Powers generally; eligibility for civil service, pensions.

Reserve police officers, while on duty in such capacity, shall have police powers equivalent to those of regular police officers subject to the limitations set forth in § 26-24 and such limitations as the police chief may direct. Reserve police officers shall not be subject to or acquire any rights under the civil service rules of the city or the public safety personnel retirement system of the state or the police pension fund act of the state or of this city.
(Code 1967, § 29-22)

Sec. 26-32. Uniforms.

The police chief shall specify the type of badge and the type and color of uniform to be worn by reserve police officers. Such officers shall conform to the specifications as made by the police chief and shall purchase uniforms at their own expense and at no cost to the city.
(Code 1967, § 29-23)

Sec. 26-33. Dismissal.

The police chief shall have the authority to dismiss reserve police officers when he finds such dismissal to be in the best interests of the city or when such officer fails to maintain active reserve police officer status.
(Code 1967, § 29-24)

Sec. 26-34. Restrictions on appointment.

The police chief shall not appoint any person as a reserve police officer who does not or will not serve as an active reserve police officer as specified in this section.
(Code 1967, § 29-25)

Sec. 26-35. Effect of article on regular officers.

The provisions of this article shall not be construed as altering, limiting or expanding the powers, duties and authority of regular police officers.
(Code 1967, § 29-26)

Sec. 26-36. Impersonation of officers.

No person shall impersonate a reserve police officer nor shall any person undertake the duties of a reserve police officer without having first been appointed by the chief of police.
(Code 1967, § 29-27)

Secs. 26-37—26-50. Reserved.

ARTICLE III. ABANDONED OR UNCLAIMED PROPERTY[2]

Sec. 26-51. Definitions.

For the purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section, unless the context clearly indicates a different meaning:

Abandoned property means that property to which the owner has relinquished all right, title, claim and possession, with intention of not reclaiming it or resuming its ownership, possession or enjoyment.

Beer means any beverage obtained by alcoholic fermentation, infusion or decoction of barley, malt, hops or other ingredients or any combination of them.

Owner means the person in whom is vested the ownership, dominion, care, control, management or title of property.

Personal property means property of every kind, except real property.

Spirituous liquor means alcohol, brandy, whiskey, rum, tequila, mescal, gin, wine, porter, ale, beer, any malt liquor, malt beverage, absinthe or compound or mixture of any of them, or of any of them with any vegetable or other substance, alcohol, bitters, bitters containing alcohol and any liquid mixture or preparation, whether patented or otherwise, and beverage containing more than one half of one percent (0.5%) of alcohol by volume.

Stolen property means that property to which the owner has been unlawfully deprived of possession of such property and which has been taken into police custody pursuant to a commission of any crime as defined by the laws of the state and the city.

Wine means the product obtained by the fermentation of grapes or other agricultural products containing natural or added sugar or any such alcoholic beverage fortified with grape brandy and containing not more than twenty-four percent (24%) of alcohol by volume.
(Code 1967, § 34-1; Ord. No. 2010.46, 12-9-10; Ord. No. 2012.58, 12-13-12)

Sec. 26-52. Exemption.

This article is not applicable to bicycles.
(Code 1967, § 34-10)

Cross reference—See Chapter 7 of this code on abandoned bicycles, § 7-41 et seq.

[2]**Cross reference—**Abandoned bicycles, § 7-41 et seq.

Sec. 26-53. Repealed.
(Ord. No. 92.07, 5-14-92)

Sec. 26-53.1. Disposal of property in police possession, notice, publication.

(a) Money or property coming into the hands of the police department as abandoned, stolen, found, seized, contraband, safekeeping or as evidence, shall be disposed of as follows:

(1) Property used as evidence in any criminal proceeding shall be disposed of as provided in the State Rules of Criminal Procedure, Rule 28.2; items which cannot be returned to a legal owner shall be disposed of as provided in paragraph (10) below;

(2) Property seized as a forfeiture shall be disposed of as forfeitures under A.R.S. § 13-4301 et seq;

(3) Illegal drugs not used for evidence or as forfeitures shall be disposed of as provided in A.R.S. § 13-3413;

(4) Confiscated spirituous liquors not used as evidence shall be destroyed unless otherwise provided herein;

(5) Stolen property not used as evidence or falling under another provision herein shall be disposed of as property held for safekeeping under paragraph (9) hereof;

(6) Contraband not otherwise disposed of as provided herein shall be destroyed;

(7) Explosives and hazardous materials shall be destroyed, disposed of or retained for use by the police department unless otherwise provided for in this section;

(8) Perishable items not otherwise disposed of as provided herein or reclaimed by the owner may be destroyed after twenty-four (24) hours of its acquisition by the department;

(9) Property which is being held for safekeeping by the police, or entrusted to the police for safekeeping, shall be disposed of after the department provides notice to the person entrusting the property or the owner. The notice shall be sent to such person within thirty (30) days after the entrustment notifying that person to claim the property no later than thirty (30) days following the date of the notice, or else the property will be disposed of by the department as provided in paragraph (10); or

(10) Property whose disposition is not otherwise provided for in this section shall be disposed of pursuant to state law.

(b) If there is a dispute as to the ownership of money or property coming into the possession of the police department, the department shall request an administrative hearing to determine who has the greater right to the possession of the property. All parties claiming an ownership interest in the property shall be given notice of the hearing and an opportunity to be heard. The hearing officer shall establish rules of administration and procedure to ensure the fair and orderly conduct of hearings held pursuant to this section.

(c) Money or property coming into the hands of the police department as abandoned, stolen, found, seized, contraband, safekeeping or as evidence, shall pursuant to statute, require the city to post a notice containing a description of the property before the final disposition of the property.
(Ord. No. 92.07, 5-14-92; Ord. No. 2002.08, 2-28-02, Ord. No. 2010.46, 12-9-10; Ord. No. O2014.07; Ord. No. O2014.07, 1-23-14)

Sec. 26-53.2. Repealed.
(Ord. No. 2010.46, 12-9-10; Ord. No. 2012.58, 12-13-12)

Secs. 26-54—26-59. Repealed.
(Ord. No. 92.07, 5-14-92)

ARTICLE IV. PUBLIC SAFETY ENHANCEMENT CHARGE

Sec. 26-60. Establishment of public safety enhancement charge.

(a) A public safety enhancement charge shall be imposed by the Tempe City Court on all offenses processed by the court which result in an order or agreement to pay any fine, sanction, penalty or assessment or participate in any court authorized diversion program. The user charge shall not be imposed on civil parking violations. The public safety enhancement charge shall be collected by the court for deposit into the city's general fund.

(b) A public safety enhancement charge is hereby established for the purpose of enhancing the general operations of the police and fire medical rescue departments. Monies collected shall supplement funds to be provided to the departments through the city budget process.
(Ord. No. 99.17, 7-15-99; Ord. No. 2010.22, 6-24-10; Ord. No. O2014.14, 3-20-14)

Secs. 26-61—26-69. Reserved.

ARTICLE V. SECURITY PLANS

Sec. 26-70. Security plans.

(a) *Purpose.* The purpose of this section is to promote the health, safety, and welfare of the citizens, visitors, businesses and the community by requiring certain types of property uses within the city to file, follow, and keep current a security plan.

(b) *Uses requiring security plans.* A security plan shall be required upon the commencement, assumption, or continuation of any of the following uses:

(1) Bars, cocktail lounges, taverns, danceclubs, nightclubs and similar businesses;

(2) Adult-oriented businesses;

(3) Recreational or amusement business, both indoor and outdoor activities, including pool halls and video arcades;

(4) Entertainment as accessory to restaurant facilities, bars or similar establishments;

(5) Hotels and motels;

(6) Convenience stores;

(7) Medical marijuana dispensary or cultivation facility; or

(8) Upon a determination by the chief of police, based on documented calls for service, reported crimes, complaints, or any other factual information that demonstrates a disregard for public safety. Upon a determination made pursuant to this subsection, the property owner or designee of the use subject to the determination shall submit a complete security plan application within ten (10) days of the receipt of the determination in accordance with subsection (b) of this section. Failure to submit a security plan application within ten (10) days shall be a violation of this article and punishable as set forth in § 1-7.

(c) No use listed in this section shall be able to operate without an approved security plan. Any violation of this article is a class one misdemeanor.

(d) *Security plan submittal.* Every applicant requiring a security plan shall furnish to the police department designee a complete application signed by the owner of the use or the statutory agent with the following information:

(1) Plan of operation, program plan and hours;

(2) Site/building information;

(3) Safety conditions;

(4) Patron parking, ingress and egress, vehicular and pedestrian traffic control;

(5) Staffing and operations;

(6) Conditions of plan;

(7) On-site contact person/manager;

(8) Any and all responsible parties for business operations;

(9) Floor plan and evacuation routes; and

(10) Any other reasonable information the police department deems necessary for review and approval of the security plan.

(e) *Security plan review and approval time frames*.

(1) *Administrative time frame; unless the security plan has already been approved.* Within fifteen (15) days after receiving a security plan application under this article, the police department designee will determine whether the application is administratively complete, and notify the applicant or their agent;

(2) *Substantive review time frame*. Within forty-five (45) days after the notice of administrative completion, the police department will complete a substantive review of the security plan application;

(3) *Overall time frame*. Within ninety (90) days, subject to any authorized extensions, after receiving a complete security plan application pursuant to this article, the police department designee will approve or deny the security plan; and

(4) The time frames provided for in this section are suspended if a security plan application has been determined to be administratively incomplete or a supplemental request has been made during the substantive review period until the applicant corrects any deficiencies or responds to a supplemental request for information. In no event shall an application remain incomplete in excess of sixty (60) days.

(f) *Duration and renewal*.

(1) A security plan approved by the police department shall be valid for a period of two (2) years. An approved security plan is subject to revision by the police department if:

a. There is a material change in circumstances; or

b. Upon a written request from the property owner or agent; or

c. It is deemed necessary by the police department for the protection of the health, safety, or welfare of the community.

(2) A security plan renewal application shall be submitted to the police department designee at least ninety (90) days prior to the expiration of the current plan.

(g) *Non-acceptance and denial*.

(1) The police department designee shall not accept a security plan submittal if the application is incomplete.

(2) The police department designee shall deny approval of a security plan application if:

a. All requirements for the security plan have not been completed; or

b. The applicant is a corporation or other entity not qualified or licensed to transact business in Arizona; or

c. False or misleading information was given or submitted in support of a security plan, or the applicant failed or refused to make full disclosure of all required information; or

d. The applicant is delinquent in payment to the city of any taxes, fees, fines, or penalties imposed upon the applicant, or arising out of any other business activity owned or operated by the applicant that is subject to licensing by the city.

(h) *Information update*. All businesses required to have a security plan shall give written notice to the police department designee of any material changes in information submitted in connection with an application or approved security plan. This information must be provided to the police department designee within thirty (30) days of any such change.

(i) *Mandatory reporting*. Any business or person regulated by this article shall immediately, but in no event greater than one hour, report to the Tempe police department any act constituting a public safety incident that occurs on its property located within the city.

(j) *Violations*.

(1) Failure to comply with the terms and conditions of an approved security plan constitutes a violation. Two (2) or more violations within a one year period constitutes grounds for revocation.

(2) Submitting false or misleading information in support of a security plan constitutes a violation.

(3) Any action or inaction in violation of this section that places an individual or individuals in imminent danger constitutes a violation and is grounds for immediate revocation.

(4) Failure to timely report public safety incidents as required under this article constitutes a violation.

(5) The police department designee shall be responsible for initiating any revocation proceedings.

(k) *Penalties.* No person shall operate or allow the operation of a use, which requires a security plan, in the absence of such required security plan or in a manner which violates a security plan required by this article. Any violation of this article may result in a fine, revocation of security plan, liability for emergency response and criminal charges, as set forth in this article. Each individual day of operation in violation of this article shall be a separate violation. All remedies prescribed by this article shall be cumulative and supplemental and the use of one or more remedies by the city shall not bar the use of any other remedy for enforcing this article.

(l) *Liability for emergency responses.* Any use or person regulated by this article shall be liable for the reasonable costs of any emergency response that is required as a result of a breach of the security plan or of this article.

(1) The expenses of an emergency response are a charge against the person or entity liable for those expenses. The charge constitutes a debt of that person or entity, and may be collected by the city and any emergency responder that incurred expenses while undertaking the emergency response. The liability imposed under this article is in addition to and not in limitation of any other liability that may be imposed. An insurance policy may exclude coverage for liability for expenses of an emergency response under this article but an insurance exclusion does not waive or alter the liability to the city or other providers of the emergency response.

(2) For purposes of this section, "expenses of an emergency response" shall mean reasonable costs directly incurred by the city or other emergency responders that make an appropriate emergency response to an incident. "Reasonable costs" shall mean all costs of providing police, fire fighting, rescue, transport and emergency medical services at the scene of an incident including the salaries of the persons who respond to the incident. "Emergency response" shall mean a response by one or more public safety agencies necessary to prevent a public safety incident or to restore order during such an incident.

(3) The city does not hereby waive its right to seek reimbursement for actual costs exceeding the fine imposed in subsection (m) through other legal remedies or procedures.

(m) In addition to the other penalties and liabilities imposed in this article, in the event of an emergency response to a public safety incident that occurs on a premises located within the city that results from or is related to a violation of a security plan or of this article, a fine not to exceed five thousand dollars ($5,000) per incident shall be imposed for each incident.

(n) *Appeal.* The appeal procedure is as follows:

(1) If an applicant for security plan is dissatisfied with any decision under this article, the applicant may administratively appeal the decision to the chief of police or designee, within five (5) days of receipt of the decision. The chief of police or designee shall render a decision within five (5) working days of receipt of request for review;

(2) If an applicant is dissatisfied with the decision of the chief of police, they may file an appeal in writing with the city clerk to be heard by a hearing officer. Any appeal shall be filed within ten (10) days of receipt of the decision of the chief of police, setting forth the reasons why the decision should not be implemented;

(3) The hearing officer shall consider all facts relating to the issuance of the violation and fine and the reasons therefore and may uphold the penalty imposed, eliminate the penalty, or modify it. The hearing officer shall render their decision within ten (10) days of submission;

(4) The costs of the administrative hearing may be assessed to the responsible party in addition to any other fines and penalties in the event that the violation is upheld; and

(5) If an applicant is dissatisfied with the review by the hearing officer they may file an appeal in writing with the city clerk to be heard by the city council. Any appeal shall be filed within ten (10) days of receipt of the decision of the hearing officer, setting forth the reasons why the decision should not be implemented. The decision of the city council shall constitute the final decision.

(Ord. No. 2004.42, 1-20-05; Ord. No. 2010.02, 2-4-10; Ord. No. 2011.01, 1-27-11; Ord. No. O2014.18, 4-10-14)

Sec. 26-71. Security plans for multi-unit dwellings.

(a) *Purpose.* The purpose of this section is to promote the health, safety, and welfare of the citizens within the city.

(b) *Uses requiring a security plan.* A security plan shall be required by a multi-unit dwelling of five (5) units or greater, if, based upon documented calls for service, reported crimes, complaints, or other factual information, that has occurred within the preceding twelve (12) months, that properly demonstrates a disregard for public safety by the multi-unit dwelling. This determination shall be made by police department and shall be based on the above measurable criteria as well as any other public safety incident. For purposes of this chapter, "public safety incident" means an incident classified as a felony under state law consisting of a riot, sexual assault, a brawl or a disturbance, in which bodily injuries are sustained by any person and such injuries would be obvious to a reasonable person, or tumultuous conduct of sufficient intensity as to require the intervention of a peace officer or security guard to restore normal order, or an incident in which a weapon is brandished, displayed or used. Public safety incident does not include the use of nonlethal devices by a peace officer.

(c) Any violation of this article is a class one misdemeanor.

(d) *Security plan submittal.* Every applicant required to have a security plan must submit a security plan application within ten (10) days of the notification of security plan requirement. Every applicant requiring a security plan shall furnish to the police department designee a complete application signed by the owner of the property, the statutory agent or the managing agent of the owner of the property with the following information:

(1) Plan of operation;

(2) Site/building information;

(3) Safety conditions;

(4) Visitor parking, ingress and egress, vehicular and pedestrian traffic control;

(5) On-site contact person/manager;

(6) Any and all responsible parties for business operations;

(7) Floor plan and evacuation routes; and

(8) Any other reasonable information the police department deems necessary for review and approval of the security plan.

(e) *Security plan review and approval time frames*.

(1) *Administrative time frame*. Within fifteen (15) days after receiving a security plan application under this article, the police department designee will determine whether the application is administratively complete, and notify the applicant or their agent;

(2) *Substantive review time frame*. Within forty-five (45) days after the notice of administrative completion, the police department will complete a substantive review of the security plan application;

(3) *Overall time frame*. Within ninety (90) days, subject to any authorized extensions, after receiving a complete security plan application pursuant to this article, the police department designee will approve or deny the security plan; and

(4) The time frames provided for in this section are suspended if a security plan application has been determined to be administratively incomplete or a supplemental request has been made during the substantive review period until the applicant corrects any deficiencies or responds to a supplemental request for information. In no event shall an application remain incomplete in excess of sixty (60) days.

(f) *Duration and renewal*.

(1) A security plan approved by the police department shall be valid for a period of two (2) years or until the owner is notified that a security plan is no longer necessary, whichever is sooner. An approved security plan is subject to revision by the police department if:

a. There is a material change in circumstances; or

b. Upon a written request from the property owner or agent; or

c. It is deemed necessary by the police department for the protection of the health, safety, or welfare of the community.

(2) A security plan renewal application shall be submitted to the police department designee at least ninety (90) days prior to the expiration of the current plan.

(g) *Non-acceptance and denial.*

(1) The police department designee shall not accept a security plan submittal if the application is incomplete.

(2) The police department designee shall deny approval of a security plan application if:

a. All requirements for the security plan have not been completed; or

b. The applicant is a corporation or other entity not qualified or licensed to transact business in Arizona; or

c. False or misleading information was given or submitted in support of a security plan, or the applicant failed or refused to make full disclosure of all required information; or

d. The applicant is delinquent in payment to the city of any taxes, fees, fines, or penalties imposed upon the applicant, or arising out of any other activity owned or operated by the applicant that is subject to licensing by the city.

(h) *Information update*. Applicants shall give written notice to the police department designee of any material changes in information submitted in connection with an application or approved security plan. This information must be provided to the police department within thirty (30) days of any such change.

(i) *Mandatory reporting*. Any businesses or persons regulated by this article shall immediately, but in no event longer than one hour from said businesses or persons discovery of such incident, report to the Tempe police department any known act constituting a public safety incident that occurs on its property located within the city.

(j) *Violations*.

(1) Failure to comply with the terms and conditions of an approved security plan constitutes a violation;

(2) Submitting false or misleading information in support of a security plan constitutes a violation;

(3) Any action or inaction in violation of this section that places an individual or individuals in imminent danger constitutes a violation and is grounds for an immediate revocation; and

(4) Failure to timely report public safety incidents as required under this article constitutes a violation.

(k) *Penalties.* No person shall operate or allow the operation of a multi-unit dwelling that requires a security plan in the absence of such required security plan or in a manner which violates a security plan required by this article. Any violation of this article may result in a fine, revocation, liability for emergency response and criminal charges, as set forth in this article. Each individual day of operation in violation of this article shall be a separate violation. All remedies prescribed by this article shall be cumulative and supplemental and the use of one or more remedies by the city shall not bar the use of any other remedy for enforcing this article.

(l) *Liability for emergency responses*. Any property regulated by this article shall be liable for the reasonable costs of any emergency response that is required as a result of a breach of the security plan or of this article:

(1) The expenses of an emergency response are a charge against the person or entity liable for those expenses under this article. The charge constitutes a debt of that person or entity, and may be collected by the city and any emergency responder that incurred expenses while undertaking the emergency response. The liability imposed under this article is in addition to and not in limitation of any other liability that may be imposed. An insurance policy may exclude coverage for liability for expenses of an emergency response under this article but an insurance exclusion does not waive or alter the liability to the city or other providers of the emergency response.

(2) For purposes of this section, "expenses of an emergency response" shall mean reasonable costs directly incurred by the city or other emergency responders that make an appropriate emergency response to an incident. "Reasonable costs" shall mean all costs of providing police, fire fighting, rescue, transport and emergency medical services at the scene of an incident including the salaries of the persons who respond to the incident. "Emergency response" shall mean a response by one or more public safety agencies necessary to prevent a public safety incident or to restore order during such an incident.

(3) The city does not hereby waive its right to seek reimbursement for actual costs exceeding the fine imposed in subsection (m) through other legal remedies or procedures.

(m) In addition to the penalties imposed in this article, in the event of an emergency response to a public safety incident that occurs on a premises located within the city that results from or is related to a violation of a security plan or of this article, a fine not to exceed five thousand dollars ($5,000) per incident may be imposed for each incident.

(n) *Appeal.* The appeal procedure is as follows:

(1) If an applicant for security plan is dissatisfied with any decision under this article, the applicant may administratively appeal the decision to the chief of police or designee, within fifteen (15) days of receipt of the decision. The chief of police or designee shall render a decision within fifteen (15) working days of receipt of request for review;

(2) If an applicant is dissatisfied with the decision of the chief of police, they may file an appeal in writing with the city clerk to be heard by a hearing officer. Any appeal shall be filed within ten (10) days of receipt of the decision of the chief of police, setting forth the reasons why the decision should not be implemented;

(3) The hearing officer shall consider all facts relating to the issuance of the violation and fine and the reasons therefore and may uphold the penalty imposed, eliminate the penalty, or modify it. The hearing officer shall render their decision within ten (10) days of submission;

(4) The costs of the administrative hearing may be assessed to the responsible party in addition to any other fines and penalties in the event that the violation is upheld; and

(5) If an applicant is dissatisfied with the review by the hearing officer they may file an appeal in writing with the city clerk to be heard by the city council. Any appeal shall be filed within ten (10) days of receipt of the decision of the hearing officer, setting forth the reasons why the decision should not be implemented. The decision of the city council shall constitute the final decision.

(Ord. No. O2014.18, 4-10-14)

Chapter 26A

PROCUREMENT[1]

ARTICLE I. PROCUREMENT

Sec. 26A-1. General procurement applicability.

(a) Except as otherwise provided, this chapter applies to all expenditures of public monies irrespective of their source, including federal assistance monies to this city, for the purchase of materials, goods and services, under any contract, except that this chapter does not apply to either grants, or contracts between the city and other governments. Nothing in this chapter shall prevent the city from complying with the terms and conditions of any grant, gift, bequest or cooperative agreement.

(b) The provisions of this chapter are not applicable to the following types of procurements that by their nature are not applicable to the competitive process and therefore exempt from the procurement code. However, any procurements at or in excess of fifty thousand dollars ($50,000) require formal council approval.

(1) Professional witnesses if the purpose of such contracts is to provide for professional services or testimony relating to an existing or probable judicial proceeding in which the city is or may become a party or to contracts for special investigative services for law enforcement purposes;

(2) Agreements negotiated by the city attorney or risk manager in settlement of a claim or litigation or threatened litigation are exempt from the provisions of this chapter;

(3) Worker's compensation payments for medical and related expenses;

(4) Works of fine art which are not physically a part of functional construction features, and performing art entertainment;

(5) The purchase of miscellaneous books, magazines, newspapers, subscriptions, on-line library reference services, film, videos and assorted materials for library customer check-out purposes for which contracts by competitive bid solicitation is not practicable. Does not include major book provider contracts which are competitively bid;

(6) Intergovernmental payments, purchases and agreements;

(7) Public utility purchases of water, power and related services;

[1]**Editor's note**—Ord. No. 97.55 repealed prior §§ 2-146 through 2-160 of Ch. 2, Administration, and enacted this chapter. Prior ordinances were Code 1967 § 13-1—13-3, Ord. No. 89.20, Ord. No. 90.28 and Ord. No. 91.18.

(8) Specialized seminar, training and educational classes;

(9) Magazine and media advertisement;

(10) Financial advisory and investment broker/dealer and related services;

(11) Election services;

(12) Council initiated contracts;

(13) Memberships in organizations; or

(14) Political lobbyist services.

(c) The determination of procurements considered exempt shall be made by the procurement administrator.

(d) The provisions of this chapter are not applicable to the types of procurement described in this paragraph. However, any procurements at or in excess of fifty thousand dollars ($50,000) require formal council approval. Procurement of architect services, construction, construction services, construction-manager-at-risk construction services, design-build construction services, engineer services, job-order-contracting construction services, landscape architect services, assayer services, geologist services, and land surveying services shall comply with Title 34 of the Arizona Revised Statutes. These provisions will also be utilized for the following services: construction program management, construction management, feasibility studies, materials testing, mapping, related data collection and analysis, infrastructure system analysis or other related services. The public works department, engineering division shall act as the city procurement agency and administrator for the above listed services.
(Ord. No. 97.55, 12-11-97; Ord. No. 2005.69, 9-29-05; Ord. No. 2007.72, 10-25-07; Ord. No. 2008.63, 11-6-08)

Sec. 26A-2. Chapter definitions, unless the context otherwise requires.

Adequate evidence means more than mere accusation but less than substantial evidence. Consideration shall be given to the amount of credible information available, reasonableness in view of surrounding circumstances, corroboration and other inferences that may be drawn from the existence or absence of affirmative facts.

Administrative directive means the document issued by the city manager to establish administrative policy and procedures for city departments and employees.

Affiliate means any person whose governing instruments require it to be bound by the decision of another person or whose governing board includes enough voting representatives of the other person to cause or prevent action, whether or not the power is exercised. It may also include persons doing business under a variety of names, or where there is a parent-subsidiary relationship between persons.

Assignment of rights and duties means the rights and duties of a city contract are not transferable or otherwise assignable without the written consent of the procurement office.

Authorized formal contract signer means the mayor or procurement administrator, as appropriate under the city charter and city code, once the contract has been reviewed and approved by the city procurement office, city risk management and the city attorney's office and awarded by the city council, if necessary.

Award means a determination by the city that it is entering into a contract with one or more offerors.

Bid means an offer in response to a solicitation.

Bidder means "offeror" who is a person who responds to a solicitation.

Brand name or equal specification means a written description that uses one or more manufacturers' product name or catalog item to describe the standard of quality, performance and other characteristics that meet city requirements and provides for submission of equivalent products or services.

Brand name specification means a written description limited to a list of one or more items by manufacturers' product name or catalog item to describe the standard of quality, performance and other characteristics that meet city requirements.

Business means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture or any other private legal entity.

Central services administrator means the person designated by the finance and technology director to administer the activities of the city procurement office, including the duplicating and mail center and surplus property.

Change order means a written order signed by the procurement administrator or the mayor, as necessary, who directs the contractor to make changes that are authorized by the original city solicitation and any resulting contract.

City means the municipal corporation now existing and known as the City of Tempe.

Confidential information means that if a person believes that a bid, proposal, offer, specification or protest contains information that should be withheld, a statement advising the procurement officer of this fact shall accompany the submission and the information shall be so identified wherever it appears. The information identified by the person as confidential shall not be disclosed until the procurement officer makes a written determination. The procurement officer shall review the statement and information and shall determine in writing whether the information shall be withheld. Such determination statement may be reviewed by the city attorney's office and shall be approved by the procurement administrator; and if the procurement officer determines to disclose the information, the procurement officer shall inform the person in writing of such determination.

Construction means the process of building, altering, repairing, improving or demolishing any public structure or building, or other public improvements of any kind to any public real property. Construction does not include the routine operation, routine repair or routine maintenance of existing structures, buildings or real property. Procurement responsibility for construction and related architectural and engineering services are delegated to the director

directing the activities of the public works department and set apart from the procurement of goods and services.

Contract means all types of city agreements, regardless of what they may be called, for the procurement of goods and services.

Contract administrator means any person authorized to manage, supervise, and monitor compliance with the requirements of a contract.

Contract amendment means a written modification of a contract or a unilateral exercise of a right contained in the contract.

Contract value means the dollar value or estimated dollar value of single-requirement procurement or for the initial period of a term contract.

Contractor means any person who has a contract with the city.

Cooperative procurement means procurement conducted by, or on behalf of, more than one eligible public procurement unit.

Cost-plus-a-percentage-of-cost contract means the parties to a contract agree that the fee will be a predetermined percentage of the cost of work performed and the contract does not limit the cost and fee before authorization of performance.

Cost-reimbursement contract means a contract under which a contractor is reimbursed for costs which are reasonable, allowable and allocable in accordance with the contract terms and the provisions of this chapter, and a fee, if provided for in the contract.

Days means calendar days unless otherwise specified as business days and shall be computed pursuant to A.R.S. § 1-243.

Debarment means the disqualification of a vendor to receive bid solicitations or the award of a contract by the city for a specified period of time, not to exceed three (3) years, commensurate with the seriousness of the offense resulting from conduct, failure or inadequacy of contract performance or causing harassment to the award or performance of a city contract.

Descriptive literature means information available in the ordinary course of business that shows the characteristics, construction or operation of an item or service offered and is sufficient in detail to allow for the full evaluation of a product.

Designee means a duly authorized representative of a responsible party.

Director means a person directing the activities of a city department.

Discussions means negotiations.

Eligible procurement unit means a public procurement unit or a nonprofit educational or public health institution which follows a procurement process comparable to the process set forth in this code.

Emergency procurement means the procurement of goods, materials, supplies or services which are required to remedy a situation where the health, safety, welfare or quality of welfare of the public or public property is endangered or severely reduced if immediate corrective or preventive action is not taken.

Evaluation committee means a selected group of people representing the city in evaluating bid, proposal or qualifications responses for the purpose of making a contract award; and whose responsibility is to make fair and impartial decisions. An evaluation committee may consist of one or more qualified individuals.

Filed means delivery to the procurement officer or to the procurement administrator, whichever is applicable. A time/date stamp affixed to a document by the office of the procurement officer or the procurement administrator, whichever is applicable, shall be determinative of the time of delivery for purposes of filing.

Finance and technology director means the person responsible for directing the activities of the city's internal services department.

Formal contract means a written contract resulting from a formal solicitation issued by the city procurement office and, if necessary, has been formally approved and awarded by city council.

Governing instruments means those legal documents that establish the existence of an organization and define its powers including articles of incorporation or association, constitution, charter and by-laws.

Grant means the furnishings by the city of assistance, whether financial or otherwise, to any person to support a program authorized by law. Grant does not include an agreement whose primary purpose is to procure a specific end product, whether in the form of goods, materials, supplies or services. A contract resulting from such an agreement is not a grant but a procurement contract.

Gratuities means gifts, services or money offered or given to any officer or employee of the city or to any of their family members with a view toward securing an unfair advantage of obtaining an order or favorable treatment with respect to an award or contract.

Interested party means an actual or prospective bidder or offeror whose economic interest may be affected substantially and directly by the issuance of a solicitation, the award of a contract or by the failure to award a contract. Whether an actual or prospective bidder or offeror has an economic interest will depend upon the circumstances of each case.

Invitation for bid means all documents, whether attached or incorporated by reference, which are used for soliciting bids.

Late bid means a bid or proposal response that is received by the city procurement office after the due date and time stated in the city’s solicitation document or as may be modified by any supplemental addendum; and such late bids or proposals shall be rejected and not considered.

Legal counsel means a person licensed as an attorney pursuant to rules of the Supreme Court, Title 17A, Arizona Revised Statutes.

Materials means all personal property, including, but not limited to, equipment, supplies, printing, insurance and leases of personal property but does not include purchase of land, acquiring a permanent interest in land or real property or leasing land or real property.

May denotes the permissive.

Minor informality means a mistake, excluding judgmental errors, that have negligible material effect on price, quantity, delivery or contractual terms and waiver or correction of such mistake does not prejudice other bidders or offerors.

Model procurement code means the comprehensive plan or "model" for the fundamental principles of public procurement as developed by the American Bar Association, Section of Urban, State and Local Government Law.

Multi-step sealed bidding means a two-phase process consisting of a technical first phase composed of one or more steps in which bidders submit unpriced technical offers to be evaluated by the city and a second phase in which those bidders whose technical offers are determined to be acceptable during the first phase have their price bids considered.

Multiple award means an award of an indefinite quantity contract for one or more similar materials or services to more than one bidder or offeror.

Must means something is mandatory.

Negotiation means an exchange or series of exchanges between the city and an offeror or contractor that allows the city, the offeror or contractor to revise an offer or contract, unless revision is specifically prohibited by this chapter or statutes.

Newspaper means a publication regularly issued for dissemination of news of a general and public character at stated short intervals of time. Such publication shall be from a known office of publication and shall bear dates of issue and be numbered consecutively. It shall not be designed primarily for advertising, free circulation or circulation at nominal rates, but shall have a bona fide list of paying subscribers.

Nonprofit educational or public health institution means any educational or public health institution, no part of the income of which is distributable to its members, directors or officers.

Offer means a response to a solicitation.

Offeror means a person that responds to a solicitation.

Person means any corporation, business, individual, union, committee, club, other organization or group of individuals.

Price analysis means the evaluation of price data.

Price data means information concerning prices, including profit and overhead, for goods, materials and services substantially similar to those being procured under a contract or subcontract. In this definition, "prices" refers to offered or proposed selling prices, historical selling prices or current selling prices of the items being procured.

Procurement means buying, purchasing, renting, leasing or otherwise acquiring any materials, supplies or services. Procurement also includes all functions that pertain to the obtaining of any material or service, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

Procurement administrator means the central services administrator.

Procurement officer means any buyer, duly authorized to enter into and administer contracts and make written determinations with respect to city contracts; and includes an authorized representative acting within the limits of the officer's authority.

Professional services means those services requiring specialized knowledge, education or skill and where the qualifications of the person(s) rendering the services are of primary importance. Professional services shall include but not be limited to appraisers, land surveyors, attorneys, architects, engineers, psychologists, physicians, health practitioners, auditors, systems and software analysts and professional consultants.

Proposal means an offer submitted in response to a solicitation.

Prospective offeror means a person that expresses an interest in a specific solicitation.

Public procurement unit means a political subdivision, the city, the State of Arizona or an agency of the United States.

Purchase requisition means that document, or electronic transmission, whereby a department requests that a contract be entered into for a specific need, and may include, but is not limited to, the description of the requested item, estimated cost, delivery schedule, transportation data, criteria for evaluation, and suggested sources of supply.

Qualified products list means an approved list of materials, goods or services described by model or catalogue numbers, that, prior to competitive solicitation, the city has determined will meet the applicable specification requirements.

Qualified providers list means a list of service firms which have been pre-qualified to provide a service in a specific field. Such list may be established by a competitive sealed proposals or request for qualifications.

Requirement of good faith means that all parties involved in the negotiation, performance or administration of city contracts are required to act in good faith.

Request for proposals means all documents whether attached or incorporated by reference, which are used for soliciting proposals in accordance with procedures prescribed within this chapter.

Request for qualifications means a request by the city for detailed information concerning the qualifications of firms to provide professional services.

Responsible bidder or offeror means a person who has the capability to perform the contract requirements and the integrity and reliability which will assure good faith performance.

Responsive bidder or offeror means a person who submits a bid which conforms in all material respects to the invitation for bids or request for proposals.

Services means the furnishing of labor, time or effort by a contractor or subcontractor which does not involve the delivery of a specific end product other than required reports and performance. Services shall include but not be limited to repair and maintenance, trades and crafts work, clerical and machine operating functions, concession operations, food catering, etc.

Shall means something is mandatory.

Single requirement procurement means the purchase, lease, or rental of materials or services without a known pattern of recurring need by the city.

Solicitation means an invitation for bids, a request for technical offers, a request for proposals, a request for quotations, a request for qualifications or any other invitation or request by which the city invites a person to participate in a procurement process.

Spot market means a short lived market where specific materials are subject to limited purchase availability; or where a significantly reduced price offer requires the material's immediate procurement to secure and obtain the item.

Subcontractor means a person who contracts to perform work or render services to a contractor or to another subcontractor as a part of a contract with the city.

Substantial evidence means such relevant evidence as a reasonable person might accept as sufficient to support a particular conclusion.

Supplementary general principles of law means that unless displaced by the particular provisions of this chapter, the principles of law and equity, including the uniform commercial code of this state, the common law of contracts as applied in this state and law relative to agency, fraud, misrepresentation, duress, coercion and mistake are applicable and supplement the provisions of this chapter.

Suspension means an action taken by the finance and technology director temporarily disqualifying a person from participating in city procurements.

Technical offer means unpriced written information from a prospective contractor stating the manner in which the prospective contractor intends to perform certain work, its qualifications, and its terms and conditions.

Term contract means a contract for the supply of materials or services for a specified period of time as stated within the solicitation document and has provisions for contract cancellation, and for additional contract renewal periods.

Term contract administration means the monitoring of term contracts to ensure compliance with the city's contract award and any term contract exceeding its estimated value shall be resubmitted for review and approval by city council.

Vendor means a person or firm in the business of selling or otherwise providing products, materials or services.

Void contract means a contract that contains unlawful language or a contract that conflicts with the requirements of the city's solicitation.
(Ord. No. 97.55, 12-11-97; Ord. No. 2001.17, 7-26-01; Ord. No. 2005.69, 9-29-05; Ord. No. 2007.72, 10-25-07; Ord. No. 2008.63, 11-6-08; Ord. No. 2010.02, 2-4-10; Ord. No. O2014.27, 6-26-14)

Sec. 26A-3. Authority of the procurement administrator.

(a) Except as otherwise provided in this chapter, the procurement administrator, under the direction of the finance and technology director, may adopt operational procedures, consistent with this chapter, governing the procurement and management of all materials and services to be procured by the city and the disposal of materials.

(b) Except as otherwise provided in this chapter, the procurement administrator shall:

(1) Supervise and administer the procurement of all materials and services required by the city in general conformity to procurement practices promoted by the ABA Model Procurement Code;

(2) Establish rules and regulations for the procurement of all materials and services for the city;

(3) Establish rules and regulations for the sale, trade, transfer or disposal of surplus materials belonging to the city; and

(4) Prepare, issue, revise, maintain and monitor the use of specifications for materials and services required by the city.

(c) Written determinations required by this chapter shall be retained in the appropriate official file of the procurement office.
(Ord. No. 97.55, 12-11-97; Ord. No. 2001.17, 7-26-01; Ord. No. 2005.69, 9-29-05; Ord. No. 2007.72, 10-25-07; Ord. No. 2010.02, 2-4-10)

Sec. 26A-4. Procurement procedures by dollar value.

(a) *Small purchases under $5,000.* The single requirement procurement of materials and services, of less than five thousand dollars ($5,000) shall be made in accord with those rules and regulations set forth and published by the city procurement administrator.

(b) *Small purchases $5,000 to $49,999.* The single requirement or term contract procurement of materials and services, of less than fifty thousand dollars ($50,000) and greater than or equal to five thousand dollars ($5,000) shall be made in accord with § 26A-11(b).

(c) *Formal procurements $50,000 and over*. Materials, goods and services, except as otherwise provided herein, when the single requirement or estimated value during an initial term contract period shall be equal or exceeding fifty thousand dollars ($50,000) shall be procured by formal, written solicitation.
(Ord. No. 97.55, 12-11-97; Ord. No. 2005.69, 9-29-05; Ord. No. 2007.72, 10-25-07 Ord. No. 2008.63, 11-6-08)

Sec. 26A-5. Procurement authorization levels.

(a) The procurement administrator shall have the authority to approve and sign, if necessary, procurements up to and including forty-nine thousand nine hundred ninety-nine dollars ($49,999).

(b) Except for formal contracts requiring the signature of the mayor, the finance and technology director or designee shall have the authority to enter into city council approved procurements equal to or exceeding fifty thousand dollars ($50,000).

(c) The city council shall award contracts with a value equal to or exceeding fifty thousand dollars ($50,000).

(d) During those months when the city council meets only once, the city manager or designee shall have the authority to award and sign contracts exceeding fifty thousand dollars ($50,000). Any award action taken shall be presented for ratification at the next regularly scheduled city council meeting.
(Ord. No. 97.55, 12-11-97; Ord. No. 2001.17, 7-26-01; Ord. No. 2005.69, 9-29-05; Ord. No. 2007.72, 10-25-07; Ord. No. 2008.63, 11-6-08; Ord. No. 2010.02, 2-4-10)

Sec. 26A-6. Competitive sealed bidding.

(a) *Conditions for use*. All contracts of the city shall be awarded by competitive sealed bidding except as otherwise provided in this chapter.

(b) *Invitation for bids*. An invitation for bids shall be issued and shall include specifications, and all contractual terms and conditions applicable to the procurement.

(c) *Public notice*. The procurement office shall develop and maintain a method for providing adequate notice of public bid solicitations, which shall identify the place, date and time of bid opening. Notice of the bid solicitation shall be posted for public inspection and a copy of the bid solicitation shall be available for public inspection review in the procurement office. If the solicitation is for services other than those described in A.R.S. §§ 41-2513 and 41-2578, the notice shall include publication one or more times in a single newspaper within this state. The publication shall be not less than two (2) weeks before solicitation opening and shall be circulated within the city. Bids shall be opened no earlier than two (2) weeks from date of issue. A shorter time period may be established when unique circumstances deem it appropriate. A written determination shall be signed by the procurement officer and the procurement administrator citing the reasons why a shorter time frame is necessary.

(d) *Solicitation amendment.* If a solicitation is changed by a solicitation amendment, the procurement officer shall notify suppliers to whom the procurement officer distributed the solicitation. It is the responsibility of the offeror to obtain any solicitation amendments. An

offeror shall acknowledge receipt of an amendment in the manner specified in the solicitation or solicitation amendment on or before the offer due date and time. A procurement officer shall issue a solicitation amendment to do any or all of the following:

(1) Make changes in the solicitation;

(2) Correct defects or ambiguities;

(3) Provide additional information or instructions; or

(4) Extend the offer due date and time, if the procurement officer determines that an extension is in the best interest of the city.

(e) *Late bids*. A bid, modification or withdrawal is late if it is received at the location designated in the invitation for bids after the time and date set for bid opening. A late bid, modification or withdrawal shall be rejected unless the bid, modification or withdrawal would have been timely received but for the action or inaction of central services personnel and is received before contract award. A late bid shall not be opened, except (if necessary), for identification purposes. Delivery and return of late bids shall be handled in the following manner:

(1) If hand delivered, a late bid shall be time and date stamped, refused and returned to the bidder with a late bid notice placed in the bid file. A copy of the front envelope or box cover showing the time and date stamp shall be made and retained in the procurement file;

(2) If delivered by mail or electronically delivered (provided this delivery method has been approved), the bid shall be time and date stamped and filed unopened within the procurement file for thirty (30) days. The procurement administrator may discard the document within thirty (30) days after the recorded date unless the offeror requests the document be returned;

(3) A late bid notice shall be mailed or electronically sent to the late bidder; and

(4) The procurement office shall determine the method for bid issuance and for acceptable response delivery and so state in the invitation for bids document.

(f) *Bid opening*. Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. The amount of each bid, and such other relevant information as the procurement administrator deems appropriate, together with the name of each bidder shall be recorded. This record shall be open to public inspection. The bids shall not be opened for public inspection until after a contract is awarded. After contract award, the bids shall be available for public inspection, except to the extent that the withholding of information is permitted or required by law. If the bidder designates a portion of its bid as confidential, it shall isolate and identify in writing the confidential portions in accordance with procedures set forth in this chapter, but the city remains subject to the Arizona public records law requirements. Prior to the scheduled opening, the procurement department may open an unidentified offer to identify the offeror. If this occurs, the staff member shall record the reason for opening the offer, the date and time the offer was opened, and the solicitation number. The offer shall be secured and retained for public opening.

(g) *Bid acceptance and bid evaluation.* Bids shall be unconditionally accepted without alteration or correction, except as authorized in this chapter. Bids shall be evaluated based on the requirements set forth in the invitations for bids. No criteria may be used in bid evaluation that are not set forth in the invitation for bids.

(h) *Correction or withdrawal of bids prior to award.* Correction or withdrawal of inadvertently erroneous bids before or after bid opening may be permitted where appropriate. Mistakes discovered before bid opening may be modified or withdrawn by written notice received in the procurement office prior to the time set for bid opening. After bid opening corrections in bids shall be permitted only to the extent that the bidder can show by clear and convincing evidence that a mistake of a non-judgmental character was made and that the mistake and the intended offer are evident in the uncorrected offer; for example, an error in the extension of unit prices. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the city or fair competition shall be permitted. All decisions to permit the correction or withdrawal of bids shall be supported by a written determination made by the procurement officer and approved by the procurement administrator. In lieu of bid correction, a low bidder alleging a material mistake of fact may be permitted to withdraw its bid if:

(1) The mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident; or

(2) The bidder submits evidence which clearly and convincingly demonstrates that a mistake was made.

(i) *Mistakes discovered after award - contractor responsibility.* If a mistake in the offer is discovered after the award, the offeror may request withdrawal or correction in writing and shall include all of the following in the written request:

(1) Explanation of the mistake and any other relevant information;

(2) A request for correction including the corrected offer or a request for withdrawal; and

(3) The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the city.

(j) *Mistakes discovered after award – city's responsibility.* Based on the considerations of fair competition and the best interest of the city, the procurement administrator may:

(1) Allow correction of the mistake, if the resulting dollar amount of the correction is less than the next lowest offer;

(2) Cancel all or part of the award; or

(3) Deny correction or withdrawal.

(k) *Mistakes discovered after award – re-award option.* After cancellation of all or part of an award, if the offer acceptance period has not expired, the procurement administrator may award all or part of the contract to the next lowest responsible and responsive offeror, based on the considerations of fair competition and the best interest of the city. Any decision that allows

for the correction of a mistake or the cancellation of a contract shall be supported by a written determination made by the procurement officer and approved by the procurement administrator.

(l) *Extension of offer acceptance period.* To extend the offer acceptance period, a procurement officer shall notify offerors in writing of an extension and request written concurrence from all offerors. To be eligible for a contract award, an offeror shall submit written concurrence to the extension. The procurement officer shall not consider the offer from an offeror who fails to respond to the notice of extension.

(m) *Contract award.* The contract shall be awarded by the city council on the recommendation of the procurement administrator with appropriate written notice to the lowest responsible and responsive bidder whose bid conforms in all material respects to requirements and criteria set forth in the invitation for bids:

(1) In evaluating the bids, and for purposes of determining the low bidder, the procurement office shall include the amount of applicable business privilege tax, except that the amount of city business privilege tax shall not be included in the evaluation. Tempe privilege tax that is to be paid (returned) to the city shall be considered as a pass-through cost and calculated as zero expense to the city for evaluation purposes;

(2) In the event the low responsive and responsible bid for a purchase exceeds available funds as certified by the procurement officer and budget office, and such bid does not exceed such funds by more than five percent (5%), the procurement office is authorized, when time or economic considerations preclude re-solicitation of work of a reduced scope, to negotiate an adjustment of the bid price with the low responsive and responsible bidder, in order to bring the bid within the amount of available funds. Any such negotiated adjustment shall be based only upon eliminating independent deductive items specified in the invitation for bids;

(3) After contract award, bids shall be available for public inspection, except to the extent that the withholding of information is permitted or required by law. If the bidder designates a portion of its bid as confidential, it shall isolate and identify in writing the confidential portions as designated in the definition of confidential information, but the city remains subject to the Arizona public records law. Material portions of the bid being recommended for award will be published to the city's external web site up to five (5) days prior to council review. All other bids including evaluation information shall remain confidential until after award;

(4) The city, at its option, may not recommend for award the bid of a vendor who is in default on the payment of city taxes, licenses or other monies due the city at the time of bid opening;

(5) The city, at its option, may not recommend for award the bid of a vendor who has defaulted on a previous contract with the city; or has defaulted on a similar contract with another jurisdiction or public entity during a past three (3) year period;

(6) If there are two (2) or more low responsive bids from responsible bidders that are identical in price and that meet all the requirements and criteria set forth in the invitation for bids, award may be made by a coin toss; and

(7) The procurement office shall procure recycled materials in accord with ordinances, resolutions and administrative directives of the city.

(Ord. No. 97.55, 12-11-97; Ord. No. 2007.72, 10-25-07; Ord. No. 2008.63, 11-6-08)

Sec. 26A-7. Multi-step sealed bidding.

(a) *General*. When it is considered impractical to initially prepare a specification to support an award based on price, an invitation for bids may be issued requesting the submission of unpriced offers to be followed by an invitation for bids limited to those bidders whose offers have been determined to be technically acceptable under the criteria set forth in the first solicitation.

(b) *Multi-step sealed bidding.* Multi-step sealed bidding shall be initiated by the issuance of an invitation for bids. The multi-step invitation for bids shall state:

(1) That unpriced technical offers are requested;

(2) Whether priced bids are to be submitted at the same time as unpriced technical offers; if they are, such priced bids shall be submitted in a separate sealed envelope;

(3) That it is a multi-step sealed bid procurement, and priced bids will be considered only in the second phase and only from those bidders whose unpriced technical offers are found acceptable in the first phase;

(4) The criteria to be used in the evaluation of the unpriced technical offers;

(5) That the city, to the extent the procurement officer finds necessary, may conduct oral or written discussions of the unpriced technical offers;

(6) That bidders may designate those portions of the unpriced technical offers which contain trade secrets or other proprietary data which are to remain confidential; and

(7) That the item being procured shall be furnished in general accordance with the bidder's technical offer as found to be finally acceptable and shall meet the requirements of the invitation for bids.

(c) *Amendments to the invitation for bids*. After receipt of unpriced technical offers, amendments to the invitation for bids shall be distributed only to bidders who submitted unpriced technical offers, and they shall be permitted to submit new unpriced technical offers or to amend those submitted. If, in the opinion of the procurement officer, having obtained the procurement administrator's approval, a contemplated amendment will significantly change the nature of the procurement, the invitation for bids shall be cancelled and a new invitation for bids issued.

(d) *Receipt and handling of unpriced technical offers*. Unpriced technical offers shall not be opened publicly but shall be opened in front of two (2) or more procurement officials. Such offers shall not be disclosed to unauthorized persons. Bidders may request non-disclosure of trade secrets and other proprietary data identified in writing.

(e) *Evaluation of unpriced technical offers*. The unpriced technical offers submitted by bidders shall be evaluated solely in accordance with the criteria set forth in the invitation for bids. The unpriced technical offers shall be categorized as:

(1) Acceptable;

(2) Potentially acceptable, that is, reasonably susceptible of being made acceptable; or

(3) Unacceptable. The procurement officer shall record in writing the basis for finding an offer unacceptable and make it part of the procurement file.

(f) *Initiation of phase two.* The procurement officer may initiate phase two of the procedure if, in the procurement officer's opinion, there are sufficient acceptable unpriced technical offers to assure effective price competition in the second phase without technical discussions. If the procurement officer finds that such is not the case, the procurement officer shall issue an amendment to the invitation for bids or engage in technical discussions.

(g) *Discussion of unpriced technical offers*. The procurement officer may conduct discussions with any bidder who submits an acceptable or potentially acceptable technical offer. During the course of such discussions the procurement officer or members of the evaluation team shall not disclose any information derived from one unpriced technical offer to any other bidder. Once discussions are begun, any bidder who has not been notified that its offer has been finally found unacceptable may submit supplemental information amending its technical offer at any time until the closing date established by the procurement officer. Such submission may be made at the request of the procurement officer or upon the bidder's own initiative.

(h) *Notice of unacceptable unpriced technical offer*. When the procurement officer determines a bidder's unpriced technical offer to be unacceptable, such offeror shall not be afforded an additional opportunity to supplement its technical offer.

(i) *Mistakes during multi-step sealed bidding*. Mistakes may be corrected or bids may be withdrawn during phase one at any time. During phase two, mistakes may be corrected or withdrawal permitted in accordance with subsection (c) above.

(j) *Procedure for phase two initiation.* Upon the completion of phase one, the procurement officer shall either:

(1) Open priced bids submitted in phase one (if priced bids were required to be submitted) from bidders whose unpriced technical offers were found to be acceptable; or

(2) If priced bids have not been submitted, technical discussions have been held, or amendments to the invitations for bids have been issued, invite each acceptable bidder to submit a priced bid.

(k) *Procedure for phase two conduct*. Phase two shall be conducted as any other competitive sealed bid procurement except:

(1) No public notice need be given of this invitation to submit priced bids because such notice was previously given;

(2) After award the unpriced technical offer of the successful bidder shall be disclosed as follows. The procurement officer shall examine written requests of confidentiality for trade secrets and proprietary data in the technical offer of such bidder to determine the validity of any such requests. If the parties do not agree as to the disclosure of data, the procurement officer shall inform the bidder in writing what portions of the unpriced technical offer will be disclosed and that, unless the bidder protests under § 26A-21, the offer will be so disclosed. Such technical offer shall be open to public inspection subject to any continuing prohibition on the disclosure of confidential data; and

(3) Unpriced technical offers of bidders who are not awarded the contract shall not be open to public inspection unless the procurement administrator determines in writing that public inspection of such offers is essential to assure confidence in the integrity of the procurement process as provided for within this chapter with respect to the possible disclosure of trade secrets and proprietary data.

(Ord. No. 97.55, 12-11-97)

Sec. 26A-8. Competitive sealed proposals.

(a) *Conditions for use*. When the procurement officer with the approval of the procurement administrator, determines that the use of an invitation for bids is either not practicable or not advantageous to the city, a contract may be entered into by use of a request for proposals.

(b) *Request for proposals*. Request for proposals shall be issued and shall include desired specifications, and all contractual terms and conditions applicable to the procurement.

(c) *Public notice*. Adequate public notice of the request for proposals shall be given in the same manner as provided in § 26A-6(c).

(d) *Solicitation amendments*. Solicitation amendments shall be handled in the same manner as described in § 26A-6(d).

(e) *Receipt of proposals*. Proposals shall be opened publicly in the presence of one or more witnesses at the time and place designated in the request for proposals. The name of each offeror shall be read. All other information contained in the proposals shall be confidential so as to avoid disclosure of contents prejudicial to competing offerors during the negotiation process. Proposals shall be open for public inspection only after contract award. A proposal, modification or withdrawal is late if it is received at the location designated in the request for proposal after the time and date set for proposal opening. A late proposal, late modification or late withdrawal shall be rejected, unless the proposal, modification or withdrawal would have been timely received but for the action or inaction of central services personnel and is received before contract award. Prior to the scheduled opening, the procurement department may open an offer

to identify the offeror. If this occurs, the staff member shall record the reason for opening the offer, the date and time the offer was opened, and the solicitation number. The offer shall be secured and retained for public opening.

(f) *Correction and withdrawal of proposals prior to award.* Correction and withdrawal of proposals prior to award shall be handled in the same manner as provided in § 26A-6(g).

(g) *Mistakes discovered after award.* Mistakes discovered after award shall be handled in the same manner as provided in § 26A-6(i), (j) and (k).

(h) *Evaluation factors.* The request for proposals shall state the relative importance of price and other evaluation factors. Specific numerical weighing is not required. Evaluation factors may include but are not limited to categories such as price, quality, experience, expertise, qualifications, method of approach, responsiveness, financial strength, etc.

(i) *Extension of the offer and acceptance period.* Extension of the offer and acceptance period shall be handled in the same manner as described in § 26A-6(l).

(j) *Clarifications of offers.* The purpose for clarifications is to provide for a greater mutual understanding of the offer. Clarifications are not negotiations and material changes to the request for proposal or offer shall not be made by clarification. The procurement officer may request clarifications from any offeror(s) at any time after receipt of offers. Clarifications may be requested orally or in writing. If clarifications are requested orally, the offeror shall confirm the request in writing. A request for clarifications shall not be considered a determination that the offeror is susceptible for award. Any clarifications shall be retained in the procurement file.

(k) *Determination of not susceptible for award.* A procurement officer may determine at any time during the evaluation period and before award that an offer is not susceptible for award. The procurement officer shall notify the offeror in writing of the final determination that the offer is not susceptible for award unless the purchasing officer determines that notification to the offeror would compromise the city's ability to negotiate with other offerors. A determination of non-susceptibility shall be based on the following (but not limited to):

(1) A legal offer has not been submitted due to the lack of an authorized signature on the designated offer form; or

(2) The offer is not within the competitive range in comparison to other offers based on the scoring of evaluation criteria as set forth in the solicitation.

(l) *Negotiations with responsible offerors.* If negotiations are conducted, negotiations shall be conducted with all offerors determined to be reasonably susceptible for award. Negotiations may be conducted orally or in writing. If oral negotiations are conducted, the offeror shall confirm the negotiations in writing. Offerors may revise offers based on negotiations provided that any revision is confirmed in writing. The city may conduct negotiations with responsible offerors to improve offers in such areas as cost, price, specifications, performance or terms, to achieve best value for the city based on the requirements and the evaluation factors set forth in the solicitation. Once negotiations are initiated, an offeror may withdraw an offer at any time before the final proposal revision due date and time by submitting a written request to the procurement officer. The procurement officer shall ensure there is no disclosure of one offeror's price or any information derived from competing offers to

another offeror.

(m) *Final proposal revisions.* The procurement officer shall request written final proposal revisions from any offeror with whom negotiations have been conducted. Final proposal revisions shall be requested only once, unless the city procurement administrator makes a written determination that it is advantageous to the city to conduct further negotiations or change the city's requirements. The procurement officer shall include in the written request:

(1) The date, time and place for submission of final proposal revisions; and

(2) A statement that if offerors do not submit a written notice of withdrawal or a written final proposal revision, their last revision shall be accepted as their final proposal revision.

(n) *Contract award*. Award shall be made by the city council on the recommendation of the procurement administrator to the responsible offeror whose proposal is determined in writing to be the most advantageous to the city, taking into consideration price and the evaluation factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation. The contract file shall contain the basis on which the award is made. After contract award, the proposals shall be open for public inspection except to the extent that the withholding of information is permitted or required by law. If the offeror designates a portion of its proposal as confidential, it shall isolate and identify in writing the confidential portions, but the city remains subject to the Arizona public records law. Material portions of the recommended firm's proposal shall be published to the city's external web site up to five (5) days prior to council review. All other offers not recommended for award including evaluation information shall not be revealed until after award by council. In the event the city manager or city council rejects the recommended award, all submitted offers will become available for public review no matter if the city plans to resolicit within six (6) months.
(Ord. No. 97.55, 12-11-97; Ord. No. 2005.69, 9-29-05; Ord. No. 2007.72, 10-25-07; Ord. No. 2008.63, 11-6-08)

Sec. 26A-9. Contracting for professional services.

(a) A contract for professional services may be awarded by means of competitive sealed proposals, by an invitation for bids or by limited source selection if the director of the using department determines in writing that the nature of the service presents such limited competition that a competitive process cannot reasonably be used or, if used, will result in a substantially higher cost to the city, will otherwise impair the city's financial interests or will substantially impede the city's administrative functions or the delivery of services to the public; or if only one provider has the experience and capability to successfully perform the contract. The director of the department shall be responsible for making a limited source determination, prepare and sign a written limited source justification for not seeking competition and transmit the justification to the procurement office for review.

(b) Unless the director of the department makes a limited source determination that is approved by the procurement officer and procurement administrator, the procurement office shall issue competitive solicitations for professional services.

(c) Professional and personal service contracts requiring formal city council approvals shall be reviewed by the city risk management division and city attorney's office before signing.
(Ord. No. 97.55, 12-11-97; Ord. No. 2001.17, 7-26-01; Ord. No. 2005.69, 9-29-05; Ord. No. 2007.72, 10-25-07; Ord. No. 2008.63, 11-6-08; Ord. No. 2010.02, 2-4-10)

Sec. 26A-10. Selection procedure for legal counsel.

(a) *Conditions for use*. Except as otherwise provided in this chapter, the services of legal counsel may be procured by a request for qualifications approach.

(b) *Statement of qualifications.* Persons engaged in providing the services of legal counsel may submit statements of qualifications and expressions of interest in providing such services. The city may specify a uniform format for statements of qualifications. Persons may amend these statements at any time by filing a new statement.

(c) *Public announcemen*t. Adequate notice of the need for legal services shall be given by the city attorney. The notice shall describe the services required, list the types of information and data required of each offeror, and state the relative importance of particular qualifications.

(d) *Discussions.* For legal services, the city attorney or a designee of such officer, may conduct discussions with any offeror who has submitted a proposal to determine such offeror's qualifications for further consideration. Discussions shall not disclose any information derived from proposals submitted by other offerors.

(e) *Award.* Award of legal service contracts with a dollar value requiring city council approval, shall be made by the mayor and council to the offeror determined in writing by the city attorney or designee to the best qualified provider and after negotiation of compensation determined to be fair and reasonable.
(Ord. No. 97.55, 12-11-97)

Sec. 26A-11. Small purchases.

(a) *General*. Any contract not exceeding the dollar value requiring formal bidding may be made by the procurement office in accordance with the small purchase procedures authorized in this section. Contract requirements shall not be artificially divided so as to constitute a small purchase under this section.

(b) *Small purchases between $5,000 and $49,999*. Insofar as it is practical for small purchases equal to or in excess of five thousand dollars ($5,000), but less than fifty thousand dollars ($50,000), no less than three (3) businesses shall be solicited to submit quotations. Award shall be made to the responsible bidder submitting the quotation that is most advantageous to the city and conforms in all material respects to the solicitation. The names of the businesses submitting quotations, and the date and amount of each quotation, shall be recorded and maintained as a public record. Verbal or written quotes shall be received from vendors when the total quote value is under fifteen thousand dollars ($15,000). Written quotes shall be received from vendors when the total quote value is over fifteen thousand dollars ($15,000) but under fifty thousand dollars ($50,000).

(c) *Small purchases under $5,000*. The procurement administrator shall adopt operational procedures for making small purchases of less than five thousand dollars ($5,000).

Such operational procedures shall provide for obtaining adequate and reasonable competition for the materials, goods and services being purchased.
(Ord. No. 97.55, 12-11-97; Ord. No. 2005.69, 9-29-05; Ord. No. 2007.72, 10-25-07; Ord. No. 2008.63, 11-6-08)

Sec. 26A-12. Sole source procurement.

(a) A purchase may be made or contract awarded by the procurement office without competition when a department director, procurement officer and procurement administrator determines in writing, after conducting a good faith review of available sources, that there is only one reasonable and practicable source for the required material or service. The department requesting the sole source procurement shall provide written evidence to support a sole source determination. The procurement officer will participate with the department in the conduct of negotiations, as appropriate, to price, delivery and terms. The procurement officer may require the submission of cost or pricing data in connection with a purchase or award under this section. Sole source procurement shall be avoided, except when no reasonable alternative sources exist. A record of sole source procurements shall be maintained as a public record.

(b) The following items may be approved for sole source procurement:

(1) Interface upgrades, add-on parts and components to existing, city owned equipment which requires total compatibility assurance; license renewals for city owned software, and repair and maintenance for city owned equipment and software for which it is technologically and cost effective to procure from the original seller or manufacturer;

(2) Materials for resale in city concession operations which are purchased in response to customer demands;

(3) Spot market purchases which are evidenced to provide a substantial savings to the city and which are approved by the procurement administrator or a party delegated by the procurement administrator to review the justification for spot market purchase requests. Such spot market purchases to be requisitioned and obtained through the procurement office. Any purchase of a dollar amount requiring council approval shall be submitted for review at the next scheduled council meeting date;

(4) Specialized computer software for network infrastructure applications which have been technically reviewed, tested and justified by the city's information technologies division, and which are obtainable from a single source. This shall not apply to individual PC software obtainable from multiple suppliers; or

(5) Professional services, as determined by the department director, shall be reviewed by the procurement administrator and the city attorney.

(Ord. No. 97.55, 12-11-97; Ord. No. 2001.17, 7-26-01; Ord. No. 2007.72, 10-25-07; Ord. No. 2008.63, 11-6-08; Ord. No. 2010.02, 2-4-10)

Sec. 26A-13. Emergency procurements.

Notwithstanding any other provisions of this chapter, a department director or designee may make or authorize others to make emergency procurements of materials, goods or services when there exists a threat or severe impairment to the quality of public health, welfare or safety, or if a situation exists which makes compliance with established procurement processes impracticable, unnecessary or contrary to the public interest; provided that such emergency procurements shall be made with such competition as is practicable under the circumstances. An emergency procurement shall be limited to those materials, goods or services necessary to satisfy the emergency need. A written determination of the basis for the emergency and for the selection of the particular contractor shall be submitted to the procurement office and included in the purchase file. Any emergency procurement exceeding the dollar limit for council approval shall be scheduled for review at the next available council meeting.
(Ord. No. 97.55, 12-11-97; Ord. No. 2001.17, 7-26-01; Ord. No. 2007.72, 10-25-07; Ord. No. 2010.02, 2-4-10)

Sec. 26A-13.1. Reverse auction bidding.

(a) *Conditions for use.* When the procurement officer, with the approval of the procurement administrator determines it is advantageous to the city, a contract for goods, services, or information services may be subject to reverse auction bidding. Reverse auction bidding could include electronic bidding, over the internet in a real-time, competitive bidding event. Reverse auction bidding may be used for any of the solicitation processes described within the procurement ordinance including request for quotations, invitation for bids, and request for proposals.

(b) *Public notice.* The procurement office shall select a solicitation process and follow the procedures provided for in this chapter. Any public notice of a solicitation process utilizing the reverse auction option will clearly indicate that pricing will be established separately via an independent bidding event. Firms will be directed to not include pricing with initial submittals. Qualified firms will be invited to participate in a separate reverse auction bidding event to be announced as to time and date after offer submission.

(c) *Bid opening.* Offers shall be received and recorded in accordance with the procedures provided for in this chapter for the solicitation process selected by the procurement officer.

(d) *Bid acceptance, bid evaluation and contract award.* The procedure for bid acceptance, bid evaluation and contract award shall follow the procedures for the selected procurement process as outlined in this chapter except:

(1) When using an invitation for bid process, the submitted offers will be reviewed to determine those firms that are considered responsible and responsive to the published solicitation. Only those firms determined to be responsive and responsible will be moved forward to the pricing step using the reverse auction bidding event. The qualified firms will receive direction from the city on how the pricing step will be accomplished. The reverse auction bidding event will be conducted by the city or via a qualified reverse auction contractor. Once the reverse auction biding event is completed, the city will finalize the evaluation process by determining the lowest responsive and responsible bidder; or

(2) When using a request for proposal process, the submitted offers will be evaluated and scored in accordance with published evaluation criteria with the exception of cost. Once the initial scoring has been finalized, the city will determine which firms are considered susceptible for award. Only those firms determined susceptible for award will be invited to participate in the reverse auction bidding event to determine the price component. Once the reverse auction bidding event is complete, the city will finalize the scoring matrix. The city will have the option of entering into discussions with those firms determined susceptible for award. Interviews may be conducted as well to ensure full understanding of offers. Best and final offers may also be requested as outlined in this chapter. Award will be made to the most advantageous offer.

(Ord. No. 2008.63, 11-6-08)

Sec. 26A-14. Cancellation of solicitations.

(a) *Cancellation of solicitation*. An invitation for bids, a request for proposals or other solicitation may be cancelled, or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation at any time before award, when it is in the best interests of the city. Each solicitation issued by the city shall state that the solicitation may be cancelled and that any bid or proposal may be rejected in whole or in part when in the best interests of the city. When a solicitation is cancelled prior to opening, notice of cancellation shall be sent to all businesses solicited; identify the solicitation; briefly explain the reason for cancellation; and where appropriate, explain that an opportunity will be given to compete on any re-solicitation or any future procurements of similar materials or services. If the solicitation has been cancelled prior to opening, the city shall not open any offers received. The city may discard the offers after thirty (30) days from the notice of solicitation cancellation, unless the offeror requests the offer be returned.

(b) *Cancellation of solicitation prior to opening*. As used in this section, "opening" means the date and time set for opening of bids, receipt of unpriced technical offers in multi-step sealed bidding, or receipt of proposals in competitive sealed proposals. Prior to opening, a solicitation may be cancelled in whole or in part when the procurement officer with the approval of the procurement administrator determines in writing that such action is in the city's best interest for reasons including, but not limited to:

(1) The city no longer requires the materials or services;

(2) The city no longer can reasonably expect to fund the procurement;

(3) Proposed amendments to the solicitation would be of such importance that a new solicitation is desirable; or

(4) It is in the best interests of the city.

(Ord. No. 97.55, 12-11-97; Ord. No. 2007.72, 10-25-07; Ord. No. 2008.63, 11-6-08)

Sec. 26A-15. Rejection of bids or proposals after opening.

(a) After opening but prior to award, all bids or proposals may be rejected in whole or in part when the procurement officer with the approval of the procurement administrator determines in writing that such action is in the city's best interest for reasons including, but not limited to:

(1) The materials or services being procured are no longer required;

(2) Ambiguous or otherwise inadequate specifications were part of the solicitation;

(3) The solicitation did not provide for consideration of all factors of significance to the city;

(4) Prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;

(5) All otherwise acceptable bids or proposals received are at clearly unreasonable prices;

(6) There is reason to believe that the bids or proposals may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith; or

(7) Necessary or proposed amendments to the solicitation would be of such importance that a new solicitation may be desirable and is in the best interests of the city.

(b) When a solicitation is rejected or cancelled after opening, notice of rejection or cancellation shall be provided to all businesses that submitted bids or proposals, and may be separately sent or included as an explanation in a subsequent solicitation of the need. The reasons for cancellation or rejection shall be made a part of the procurement file and shall be available for public inspection. The city shall retain offers received under the cancelled solicitation in the procurement file. If the city intends to issue another solicitation within six (6) months after cancellation of the procurement and provided an award recommendation was not published to the city's external web site, the city shall withhold the offers from public inspection. After award of a contract under the subsequent solicitation, the city shall make offers submitted in response to the cancelled solicitation available for public inspection except for information determined to be confidential as allowed herein.

(c) A bid or proposal may be rejected if:

(1) The bidder is determined to be non-responsible; or

(2) The bid is non-responsive.

(d) A proposal or quotation may be rejected if:

(1) The person responding to the solicitation is determined to be non-responsible;

(2) It is unacceptable;

(3) The proposed price is unreasonable; or

(4) It is otherwise not advantageous to the city.

(e) Reasons for rejection shall be provided upon request by unsuccessful bidders or offerors.
(Ord. No. 97.55, 12-11-97; Ord. No. 2007.72, 10-25-07; Ord. No. 2008.63, 11-6-08)

Sec. 26A-16. Responsibility of bidders and offerors.

(a) *Determination of non-responsibility*. If a bidder or offeror who otherwise would have been awarded a contract is found non-responsible, a written determination of non-responsibility, setting forth the basis of the finding, shall be prepared by the procurement officer. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of non-responsibility with respect to such bidder or offeror. The final determination shall be made part of the contract file and be made a public record.

(b) *Right of non-disclosure*. Information furnished by a bidder or offeror pursuant to this section shall not be disclosed by the city outside of the department, or using agency, without prior written consent by the bidder or offeror, to the extent allowed by law.

(c) *Factors used to demonstrate bidder or offeror responsibleness*. For a bidder or offeror to be considered responsible, the bidder or offeror shall demonstrate to the satisfaction of the city, its capability to perform an awarded contract in a satisfactory and timely manner, based on requirements stated in the city's bid solicitation which may include but not be limited to whether the proposed bidder or offeror:

(1) Has sufficient and acceptable financial, business, personnel or other resources, including subcontractors;

(2) Has a successful record of performance and integrity, which may include past contracts with the city or other public agencies;

(3) Is legally licensed, certified or otherwise legally qualified to contract with the city at the time of the response to the solicitation; and

(4) Has supplied all necessary information concerning its responsibility to meet city requirements for contract responsibleness.

(d) *Procurement responsibility criteria*. The procurement officer may establish specific responsibility criteria for a particular procurement. Any specific responsibility criteria shall be set forth in the solicitation.

(e) *Pre-qualification*. Prospective contractors may be pre-qualified for particular types of materials, goods or services. Prospective contractors have a continuing duty to provide the procurement office with information on any material change affecting the basis of pre-qualification.

(f) *Bid and contract security, material or service contracts*. The procurement officer may require the submission of security to guarantee faithful bid and contract performance. Security shall be in the form specified within the city's bid solicitation, and may include but not be limited to a performance bond, fidelity bond or irrevocable letter of credit. In determining the amount and type of security required for each contract, the procurement officer shall consider the

nature of the performance and the need for future protection to the city. The requirement for security must be included in the invitation for bids or request for proposals. Failure to timely submit security in the amount and type of security required may result in the rejection of the bid or proposal.
(Ord. No. 97.55, 12-11-97; Ord. No. 2007.72, 10-25-07; Ord. No. 2008.63, 11-6-08)

Sec. 26A-17. Types of contracts.

(a) *General.* Subject to the limitations of this section, any type of contract which will promote the best interests of this city may be used. Cost-plus-a-percentage-of-cost contracts shall not be used unless unique circumstances support the use of this type of contract mechanism. A cost-reimbursement contract may be used only if a determination is made in writing by the procurement officer that such contract is likely to be less costly to the city than any other type or that it is impracticable to obtain the materials, goods or services required except under such a contract.

(b) *Contract administration*. A contract administration system designed to insure that a contractor is performing in accordance with the solicitation under which the contract was awarded, and the terms and conditions of the contract, shall be maintained.

(c) *Approval of accounting system*. Except with respect to firm fixed-price contracts, the procurement officer may require that the proposed contractor's accounting system is adequate to allocate costs in accordance with generally accepted cost accounting principles prior to award of a contract.

(d) *Multi-term contracts*. Unless otherwise provided by law, a contract for materials or services may be entered into for a period of time as deemed to be in the best interest of this city, if the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and monies are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods are subject to the availability and appropriation of monies.

(e) *Right to inspect plant*. The city may, at reasonable times, inspect the part of the plant or place of business of a contractor or any subcontractor which is related to the performance of any contract awarded or to be awarded by the city.

(f) *Right to audit records*. The city may, at reasonable times and places, audit the books and records of:

(1) Any person, vendor or contractor who submits cost or pricing data to the extent that the books and records relate to the cost or pricing data. Any person, vendor or contractor who receives a contract, change order or contract modification for which cost or pricing data is required shall maintain the books and records that relate to the cost or pricing data for three (3) years from the date of final payment under the contract, unless a shorter period is otherwise authorized in writing by the procurement officer; and

(2) Any contractor or subcontractor under any contract or subcontract to the extent that the books and records relate to the performance of the contract or subcontract. The books and records shall be maintained by the contractor for a

period of three (3) years from the date of final payment under the prime contractor and by the subcontractor for a period of three (3) years from the date of final payment under the subcontract, unless a shorter period is otherwise authorized in writing by the finance and technology director.

(g) *Reporting of anti-competitive practices*. If for any reason collusion or other anti-competitive practices are suspected among any bidders or offerors, a notice of the relevant facts shall be transmitted to the procurement administrator and the city attorney. This section does not require a law enforcement agency conducting an investigation into such practices to convey such notice to the procurement administrator.

(h) *Prospective bidders notice*. The following pertains to bidder notices:

(1) The procurement office shall provide for the issuing of public bid solicitation notices as may be compiled and maintained on a prospective bidders list, placed for electronic inquiry, or placed for public advertisement. Inclusion of the name of a person on a bidders list shall not indicate whether the person is responsible concerning a particular procurement or otherwise capable of successfully performing a city contract;

(2) Persons desiring to be included on the prospective bidders list shall notify the procurement office. Upon notification, the procurement office shall provide the person with a bidder registration form. The person shall complete the bidder registration form and return it to the procurement office. Within thirty (30) days after receiving the bidder registration form, the procurement office shall add the person to the prospective bidders list unless the procurement administrator makes a written determination that inclusion is not advantageous to the city; and

(3) Persons that fail to respond to invitations for bids or requests for proposals for two (2) consecutive solicitations of similar material, goods or services may be removed from the applicable bidders list after mailing a notice to the business. Persons may be reinstated upon written request.

(i) *Contract form and execution.* All contracts entered into under this chapter shall be executed in the name of the city by the procurement office or the mayor, as necessary, and may be approved as to form by the city attorney. When necessary, some contracts are required to be countersigned by the city clerk.

(j) *Efficient resource procurement and utilization*. It shall be encouraged that printed material produced by a contractor in the performance of a contract shall, whenever practicable, be printed on recycled paper, labeled as printed on recycled paper and printed on both sides.
(Ord. No. 97.55, 12-11-97; Ord. No. 2001.17, 7-26-01; Ord. No. 2007.72, 10-25-07; Ord. No. 2008.63, 11-6-08; Ord. No. 2010.02, 2-4-10)

Sec. 26A-18. Specifications.

(a) *Definition*. As used in this section, "specification" means any description of the physical or functional characteristics, or of the nature of a material, good or service. Specification may include a description of any requirement for inspecting, testing or preparing a material, good or service for delivery.

(b) *Maximum practicable competition.* All specifications shall seek to promote overall economy for the purposes intended and encourage competition in satisfying the city's needs and shall not be unduly restrictive. No person preparing specifications shall receive any direct or indirect benefit from the utilization of such specifications. To the extent practicable and unless otherwise permitted by this chapter, all specifications shall describe the city's requirements in a manner that does not unnecessarily exclude a material, good or service.

(c) *Proprietary specifications.* Proprietary specifications shall not be used unless the procurement officer with the approval of the procurement administrator determines in writing that such specifications are required by demonstrable technological justification and that it is not practicable or advantageous to use a less restrictive specification. Past success in the material's performance, traditional purchasing practices or inconvenience of drawing specifications do not justify the use of proprietary specifications. If a proprietary specification is determined to be appropriate, the specification shall include the following:

(1) A description of the essential characteristics of the products and materials so specified; and

(2) A statement indicating the city's intent to consider alternative products or materials which have the described essential characteristics if such alternative products or materials are identified.

(d) *Submitting a bid for alternative products or materials.* Persons desiring to submit bids for alternative products or materials for prior approval, shall submit such products and any support information in the time specified by the bid solicitation, prior to the scheduled bid opening date. The city shall consider and either approve or reject bids submitted and shall comply with the following requirements:

(1) If in the time specified in the bid solicitation, the city has approved any alternative products or materials, the bid solicitation shall be modified to include the alternative products or materials, and the city shall issue an addendum to all registered and known bidders at least ten (10) calendar days prior to the bid opening deadline; and

(2) If the city rejects an alternative product or material, it shall give notice of the rejection to the bidder proposing the alternative product or material as required by the time specified in the bid solicitation, and prior to the bid opening date. The rejection notice shall include a description of the rejected product or material.

(e) *Accepted commercial specifications.* To the extent practicable, the city shall use accepted commercial specifications and shall procure standard commercial materials.

(f) *Brand name or equal specification.* A brand name or equal specification may be used when the procurement officer determines that use of brand name or equal specifications is advantageous to the city.

(g) *Brand name specification*. A brand name specification may be prepared and utilized only if the procurement officer makes a determination that only the identified brand name item will satisfy the city's needs.

(h) *Ozone-producing agents.* To the extent practicable and where applicable, specifications shall promote products which are documented and evaluated to have low or no-content of reactive organic compounds (ozone-producing agents).

(i) *Conservation.* Where the city considers practicable, cost effective and applicable, specifications shall promote the use of recycled content, recyclability, energy consumption and conservation.
(Ord. No. 97.55, 12-11-97; Ord. No. 2007.72, 10-25-07)

Sec. 26A-19. Contract clauses.

(a) *Contract clauses*. All city contracts for materials, goods or services shall include provisions necessary to define the responsibilities and rights of the parties to the contract. The procurement administrator, after consultation with the city attorney, may issue clauses appropriate for material, good or service contracts, addressing among others the following subjects:

(1) The unilateral right of the city to order in writing changes in the work within the scope of the contract;

(2) The unilateral right of the city to order in writing temporary stopping of the work or delaying performance that does not alter the scope of the contract;

(3) Variations occurring between estimated quantities of work in contract and actual quantities;

(4) Defective pricing;

(5) Liquidated damages;

(6) Specified excuses for delay or nonperformance;

(7) Termination of the contract for default;

(8) Termination of the contract in whole or in part for the convenience of the city; and

(9) Site conditions differing from those indicated in the contract, or ordinarily encountered; except that a differing site conditions clause need not be included in a contract that is negotiated, when the contractor provides the site or design, or when the parties have otherwise agreed with respect to the risk of differing site conditions.

(b) *Price adjustments*. Adjustments in price where allowed by the terms and conditions of a bid solicitation or contract shall be computed in one or more of the following ways:

(1) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;

(2) By unit prices specified in the contract or subsequently agreed upon;

(3) By the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon;

(4) By published price reduction or if applicable to contract, profit sharing advantage to the city concurrent with announcements to other customers, as may be specified in the contract or subsequently agreed upon;

(5) In such other manner as the contracting parties may mutually agree;

(6) In the absence of agreement by the parties, by a unilateral determination by the city of the costs attributable to the events or situations with adjustment of profit or fee as computed by the city; or

(7) A contractor shall be required to submit cost or pricing data if any adjustment in contract price is requested and permitted by the bid solicitation or contract.

(c) *Standard clauses and their modification*. The procurement administrator, after consultation with the city attorney, may establish standard contract clauses for use in city contracts. If the procurement administrator establishes any standard clauses addressing the subjects set forth in subsection (a) above, such clauses may be varied provided that any variations are supported by a written determination that states the circumstances justifying such variations, and provided that notice of any such material variation be stated in the invitation for bids or request for proposals.
(Ord. No. 97.55, 12-11-97; Ord. No. 2007.72, 10-25-07)

Sec. 26A-20. Cost principles.

(a) *Cost principles*. The procurement office shall establish cost principles which shall be used to determine the allowability of incurred costs for the purpose of reimbursing costs under contract provisions which provide for the reimbursement of costs.

(b) *Cost or pricing data*. The submission of current cost or pricing data may be required in connection with an award in situations in which analysis of the proposed price is essential to determine that the price is reasonable and fair. Any contract, change order or contract modification under which cost or pricing data is required shall contain a provision that the price to the city shall be adjusted to exclude any significant amounts by which the city finds that the price was increased because the contractor-furnished cost or pricing data was inaccurate, incomplete or not current as of the date agreed on between the parties. Such adjustment by the city may include profit or fee.

(c) *Contract pricing.* The requirements of this section need not be applied to contracts if any of the following apply:

(1) The contract price is based on adequate price competition;

(2) The contract price is based on established catalogue prices or market prices;

(3) Contract prices are set by law or regulation; or

(4) It is determined by the procurement administrator that the requirements of this section may be waived, and the reasons for the waiver are stated in writing.

(Ord. No. 97.55, 12-11-97; Ord. No. 2007.72, 10-25-07)

Sec. 26A-21. Protest procedure.

(a) *Right to protest.* Any actual or prospective bidder, offeror or contractor who believes they are aggrieved in connection with the solicitation or award of a contract may file a protest with the procurement office. All protests shall be filed with the procurement officer, with a copy of the protest being delivered to the procurement administrator. The procedures for filing the protest are set forth herein.

(b) *Resolution of bid protests.* The procurement officer shall have the authority to resolve protests. Appeals from the decisions of the procurement officer may be made to the procurement administrator as set forth herein.

(c) *Filing of a protest.* Any protest shall be in writing and shall include the following information:

(1) The name, current address and telephone number of the protester;

(2) The signature of the protester or its representative;

(3) Identification of the solicitation or contract number;

(4) A detailed statement of the legal and factual grounds of the protest including copies of relevant documents; and

(5) The form of relief requested.

(d) *Time for filing protests.* The time for filing protests shall be as follows:

(1) If a protest is based upon any alleged improprieties occurring in a solicitation prior to the deadline date of a solicitation response, such a protest must be filed prior to the deadline date. Otherwise, any protests based on any alleged improprieties in a solicitation during this time frame will be deemed waived;

(2) If a protest is based upon any alleged improprieties occurring upon or after the deadline date for a solicitation response, such protest must be filed prior to the award of the contract. Otherwise, any protests based on any alleged improprieties during this time frame will be deemed waived;

(3) Protests concerning alleged improprieties that do not exist in the initial solicitation but that allegedly exist in the subsequently incorporated addendum

to the solicitation shall be filed by the next deadline date for receipt of addendum responses;

(4) Protests concerning awards shall be filed within ten (10) business days after the contract has been awarded. The city typically publishes award recommendations five (5) days prior to council review; and

(5) The procurement officer may grant any written requests for extensions of time to file a protest if the request for an extension of time sets forth good cause as to why the extension is necessary; why the protest could not be filed within the times set forth herein; and the request is submitted prior to the expiration of time for filing the original protest. If the extension of time request is not filed prior to the expiration of time for filing the original protest, the extension and protest will be deemed to be denied and/or waived. The ruling on the request for extension shall be set forth in writing setting forth the basis for the grant or denial and, if granted, setting forth the deadline by which the protest must be filed.

(e) *Notice of protest*. The procurement officer shall immediately give notice of the protest to all interested parties.

(f) *Stay of procurements during the protest*. In the event of a timely protest as set forth herein, the procurement administrator shall make a written decision to:

(1) Proceed or not proceed with the solicitation process, award or contract execution or performance;

(2) Stay or not stay all or part of the procurement award or contract performance, based upon the best interests of the city; and

(3) The procurement administrator shall provide the protestor, procurement officer and any other interested party with a copy of the written decision as to whether or not to stay the award or contract execution or performance.

(g) *Decision by the procurement officer*. The procurement officer shall:

(1) Unless extended as provided herein, issue a written decision no later than ten (10) business days after a protest has been filed. The decision shall contain an explanation of the basis of the decision;

(2) Transmit a copy of the decision to the protester, by certified mail, return receipt requested or by electronic transmission that provides evidence of receipt; and

(3) Extend the time limit for a decision by the procurement officer for a reasonable time not to exceed thirty (30) calendar days. The procurement officer shall notify the protester in writing that the time for the issuance of a decision has been extended and the date by which a decision will be issued. If the procurement officer fails to issue a timely decision, the protester may proceed as if the procurement officer had issued an adverse decision.

(h) *Remedies*. Remedies shall be addressed as follows:

(1) If the procurement office sustains the protest in whole or part and determines that a solicitation, proposed contract award or awarded contract does not comply with the procurement code, the procurement office shall implement an appropriate remedy;

(2) In determining an appropriate remedy, the procurement office shall consider all the circumstances surrounding the procurement or proposed procurement including, but not limited to, the seriousness of the procurement deficiency, the degree of prejudice to other interested parties or to the integrity of the procurement system, the good faith of the parties, the extent of performance, costs to the city, the urgency of the procurement and the impact of the relief on the using department's mission and other relevant issues;

(3) An appropriate remedy may be to decline an option to renew the contract, to terminate the contract and reissue the solicitation, to issue a new solicitation and award a contract consistent with the procurement code, or to seek relief as determined to be in the best interests of the city and in conformity with city procurement; and

(4) If the procurement officer denies the protest, then the procurement office may lift any stays previously placed on the award or contract execution or performance and may continue with the solicitation, awarding the contract or allowing the successful bidder or respondent to begin executing the contract previously awarded.

(i) *Appeals to the procurement administrator*. A written appeal from a decision entered or deemed to be entered by the procurement officer shall be filed with the procurement administrator no later than ten (10) business days from the date the decision of the procurement officer is sent by certified mail, return receipt requested or by electronic transmission that provides evidence of receipt and the appellant shall also file a copy of the appeal with the procurement officer.

(j) *Content of appeal*. The appeal shall contain:

(1) The information set forth in subsection (c) above;

(2) A copy of the decision of the procurement officer; and

(3) The precise alleged factual or legal error in the decision of the procurement officer from which an appeal is taken.

(k) *Notice of appeal*. The procurement office shall immediately give notice of the appeal to the recommended or awarded offeror. Interested parties shall have the right to request copies of the appeal. The recommended or awarded offeror has the right to participate in the proceedings.

(l) *Stay of procurement during appeal*. In the event of a timely appeal as set forth herein, the procurement administrator shall make a written decision to:

(1) If a stay has already been issued, continue the stay. The stay can be lifted if the procurement administrator makes a written determination that the award of a contract or a notice to proceed with contract performance is necessary to protect the best interests of the city; and

(2) If a stay was not previously issued, the procurement administrator may, after reviewing the procurement officer's decision and the appeal, stay the procurement if it is determined that a stay is in the best interests of the city.

(m) *Procurement administrator report.* The finance and technology director shall require the procurement administrator to file a final report on the appeal within fifteen (15) business days from the date the appeal is filed and provide copies of the administrator's report to the appellant by certified mail, return receipt requested and the recommended or awarded offeror. The report may contain copies of:

(1) The appeal;

(2) The bid or proposal submitted by the appellant;

(3) The bid or proposal of the firm that is being considered for award;

(4) The solicitation, including the specifications or portions relevant to the appeal;

(5) The abstract of bids or proposals or relevant portions;

(6) Any other documents that are relevant to the protest; and

(7) A statement by the procurement officer setting forth findings, actions, recommendations and any additional evidence or information necessary to determine the validity of the appeal.

(n) *Extension for filing of report*. The procurement administrator may make a request to the finance and technology director in writing for an extension of the time period setting forth the reason for the extension request. The finance and technology director's determination on the request shall be in writing, state the reasons for the determination and, if an extension is granted, set forth a new date for the submission of the procurement administrator's report. The procurement administrator shall notify the appellant in writing that the time for the submission of the report has been extended and the date by which the report will be submitted.

(o) *Response to report*. The appellant may file a response to the report with the procurement administrator no later than ten (10) business days after certified receipt of the report. Copies of the response shall be provided by the appellant to the procurement officer and the finance and technology director.

(p) *Decision of procurement administrator*. Unless extensions are provided as set forth herein, the procurement administrator shall issue a written decision no later than fifteen (15) business days after appellant's certified receipt of report if no response is filed or no later than fifteen (15) business days after the procurement office receives a response.

(q) *Extension for filing of decision*. The procurement administrator may make a request to the finance and technology director in writing for an extension of the time period setting forth the reason for the extension request. The finance and technology director's determination on the request shall be in writing, state the reasons for the determination and, if an extension is granted, set forth a new date for the submission of the procurement administrator's decision. The procurement administrator shall notify the appellant in writing that the time for the issuance of the decision has been extended and the date by which the decision will be issued.

(r) *Appeals to finance and technology director*. A protester wishing to appeal a decision of the procurement administrator shall file an appeal with the finance and technology director no later than ten (10) business days from the date the procurement administrator decision is delivered by certified mail, return receipt requested to the protester/appellant. The appellant may request that the finance and technology director or his designee hold a hearing on the appeal before a hearing panel. The finance and technology director shall have the sole discretion to decide whether to hold a hearing before a hearing panel.

(s) *Dismissal before hearing*. The finance and technology director or his designee shall dismiss, upon a written decision, an appeal before scheduling a hearing if:

(1) The appeal does not state a valid basis for protest;

(2) The appeal is filed in an untimely manner; or

(3) The appeal attempts to raise issues not raised in the original protest.

(t) *Hearing*. The finance and technology director may decide to allow a hearing on the appeal of the decision of the procurement administrator. The hearing shall be conducted by a panel consisting of the finance and technology director or his designee, a representative from the city attorney's office and representatives from one or more city departments as determined appropriate by the city. The protester and the recommended or contract awarded firm(s) may be invited to attend the hearing. The decision made by a majority of the panel after the protest hearing shall be final. The panel shall issue a written decision no later than ten (10) business days after the conclusion of the panel hearing, unless the finance and technology director agrees in writing to an extension of time.

(u) *Remedies*. If, after the hearing, the hearing panel sustains the appeal in whole or part and determines that a solicitation, proposed award or award does not comply with procurement requirements and this chapter, remedies shall be implemented as appropriate and consistent with the law.
(Ord. No. 97.55, 12-11-97; Ord. No. 2001.17, 7-26-01; Ord. No. 2005.69, 9-29-05; Ord. No. 2007.72, 10-25-07; Ord. No. 2008.63, 11-6-08; Ord. No. 2010.02, 2-4-10)

Sec. 26A-22. Resolution of contract claims and controversies.

(a) *Authority to resolve contract disputes*. The procurement officer administering the contract shall have the authority to settle and resolve contract disputes. Appeals from decisions of the procurement officer may be made to the procurement administrator as set forth below. The settlement or resolution of a dispute in excess of ten percent (10%) of the total contract award amount, up to thirty thousand dollars ($30,000) requires the prior written approval of the procurement administrator. Settlement or resolution of those equal to or over thirty thousand

dollars ($30,000) requires the written approval of the finance and technology director or his designee.

(b) *Procurement officer's decision*. If a dispute cannot be resolved by mutual agreement and a contractor submits a written request for a final decision, the procurement officer shall issue a written decision no later than sixty (60) calendar days after the request is filed. Before issuing a final decision, the procurement officer shall review the facts pertinent to the dispute and secure any necessary assistance from legal, fiscal and other advisors.

(c) *Final decision.* The procurement officer shall furnish a copy of the final decision to the contractor, by certified mail, return receipt requested or by any other method that provides evidence of receipt with a copy to the procurement administrator. The decision shall include:

(1) A description of the dispute;

(2) A reference to the pertinent contract provision;

(3) A statement of the factual areas of agreement or disagreement;

(4) A statement of the procurement officer's decision, with supporting rationale; and

(5) A paragraph that substantially states that "this is the final decision of the procurement officer. This decision may be appealed to the procurement administrator. If you appeal, you must file a written notice of appeal with the finance and technology director no later than thirty (30) calendar days from the date you receive this decision."

(d) *Issuance of a timely decision*. The procurement officer may extend the time limit for issuance of a final decision for disputes exceeding thirty thousand dollars ($30,000) for a reasonable time not to exceed thirty (30) calendar days. The procurement officer shall notify the contractor in writing that the time for the issuance of a decision has been extended and the date by which a decision shall be issued. The time limit for decisions may not be extended for disputes amounting to less than thirty thousand dollars ($30,000). Unless the procurement officer extends the time limit, if the procurement officer fails to issue a decision within sixty (60) calendar days after the request on a dispute is filed, the contractor may proceed as if the procurement officer had issued an adverse decision.

(e) *Appeals to the procurement administrator*. An appeal from a final decision of a procurement officer, or the failure of the procurement officer to timely issue a decision on a dispute shall be filed with the procurement administrator no later than thirty (30) calendar days from the date the procurement officer’s final decision is delivered to the contractor, return receipt requested. The appellant shall also file a copy of the appeal with the procurement officer. The appeal shall contain a copy of the decision of the procurement officer and the basis for the precise factual or legal error in the decision of the procurement officer from which an appeal is taken. The procurement administrator may assign the dispute to a hearing or to mediation services or to arbitration in accordance with this section and discussion with the city attorney. The procurement administrator shall notify the appellant of the decision to assign the dispute within fifteen (15) business days after the date an appeal is filed.

(f) *Controversies involving city claims against a contractor*. All contract claims asserted by the city against a contractor that are not resolved by mutual agreement shall promptly be referred by the procurement officer to the procurement administrator for a hearing, mediation or arbitration in accordance with this section and discussion with the city attorney.

(g) *Hearing*. Hearings on appeals of final decisions shall be conducted in accordance with § 26A-21.

(h) *Mediation.* Contract claims and controversies may be resolved utilizing mediation services if the finance and technology director in consultation with the city attorney's office determines the use of such services is in the best interest of the city.

(i) *Arbitration.* Contract claims and controversies may be resolved utilizing arbitration if the finance and technology director in consultation with the city attorney's office determines the use of arbitration is in the best interest of the city. The claim or controversies shall be settled by arbitration in accordance with current commercial arbitration rules of the American Arbitration Association or, at the option of the city, in accordance with the provisions of the Title 12, Chapter 9, Article I, Arizona Revised Statutes.
(Ord. No. 97.55, 12-11-97; Ord. No. 2001.17, 7-26-01; Ord. No. 2005.69, 9-29-05; Ord. No. 2007.72, 10-25-07; Ord. No. 2010.02, 2-4-10)

Sec. 26A-23. Debarment and suspension.

(a) *Authority to debar or suspend*. The finance and technology director has the sole authority to debar or suspend a person from participating in city procurements.

(b) *Initiation of debarment*. Upon receipt of information concerning a possible cause for debarment, the finance and technology director shall investigate the possible cause. If the finance and technology director has a reasonable basis to believe that a cause for debarment exists, the finance and technology director may propose debarment.

(c) *Debarment or suspension causes*. The causes for debarment or suspension shall be limited to the following:

(1) Conviction of any person or any affiliate of any person for commission of a criminal offense arising out of obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;

(2) Conviction of any person or any affiliate of any person under any statute of the federal government, this state or any other state for embezzlement, theft, fraudulent schemes and artifices, fraudulent schemes and practices, bid rigging, perjury, forgery, bribery, falsification or destruction of records, or receiving stolen property; or any other offense indicating a lack of business integrity or business honesty which currently, seriously and directly affects responsibility as a city contractor and which conviction arises out of or obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;

(3) Conviction or civil judgment finding a violation by any person or affiliate of any person under state or federal antitrust statutes arising out of the submission of bids or proposals;

(4) Violations of contract provisions within three (3) years of current debarment action, as set forth below, of a character which are reasonably deemed to be so serious as to justify debarment action and which include abandonment of a contract without good cause; knowingly failing without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or failure to perform or unsatisfactory performance in accordance with the terms of one or more contracts, except that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment; or

(5) Any other cause that the finance and technology director reasonably determines to be so serious and compelling as to affect responsibility as a city contractor, including suspension or debarment of such person or any affiliate of such person by another governmental entity for any cause listed in this section.

(d) *Matters not proper for debarment or suspension.* Any conviction or judgment dated more than three (3) years prior to the notice of suspension or notice of proposed debarment shall not be a basis for any debarment or suspension of a person or an affiliate of a person.

(e) *Period of debarment.* The period of time for a debarment shall not exceed three (3) years from the date of the debarment determination. If debarment is based solely upon debarment by another governmental agency, the period of debarment may run concurrently with the period established by that other debarring agency.

(f) *Notice.* If the finance and technology director proposes debarment, the finance and technology director shall notify the person in writing within seven (7) business days by certified mail, return receipt requested, of the proposed debarment and that the person and affected affiliates have the right to a hearing which shall be scheduled in accordance with this article.

(g) *Notice to affiliates.* If the finance and technology director proposes to debar an affiliate of the person, the affiliate shall have a right to appear in any hearing on the proposed debarment to show mitigating circumstances. The affiliate shall file a written request for a hearing to the finance and technology director no later than ten (10) business days of receipt of the notice of proposed debarment. Failure to provide a written request for a hearing within the ten (10) business day period shall be a waiver of the right to a hearing.

(h) *Imputed knowledge.* The finance and technology director may attribute improper conduct to an affiliate for purposes of debarment where the impropriety occurred in connection with the affiliate's duties for or on behalf of, or with the knowledge, approval or acquiescence of, the contractor. The finance and technology director may attribute improper conduct of a person or its affiliate having a contract with a contractor for purposes of debarment where the impropriety occurred in connection with the person's duties for or on behalf of, or with the knowledge, approval or acquiescence of, the contractor.

(i) *Reinstatement.* The finance and technology director may at any time after a final decision on debarment reinstate a debarred person or rescind the debarment upon a determination that the cause upon which the debarment is based no longer exists. Any debarred person may request reinstatement by submitting a petition to the finance and technology director supported by documentary evidence showing that the cause for debarment no longer exists or has been substantially mitigated. The finance and technology director may require a hearing on the request for reinstatement. The decision on reinstatement shall be in writing no later than thirty (30) days after the request is filed and may specify the factors on which it is based.

(j) *Suspension.* If adequate evidence for debarment exists, the finance and technology director may suspend a person from receiving any award. The finance and technology director shall not suspend a person pending debarment unless sufficient reasons require suspension to protect city interests.

(k) *Period and scope of suspension.* Unless otherwise agreed to by the parties, the period of suspension shall not be more than thirty-five (35) business days without satisfying the notice requirements.

(l) *Suspension notice, hearing, determination and appeal.* The finance and technology director shall notify the person suspended by personal service or certified mail, return receipt requested. The notice of suspension shall state:

(1) The basis for suspension;

(2) The period, including dates, of the suspension;

(3) That bids or proposals shall not be solicited or accepted from the person and, if received, will not be considered; and

(4) That the person is entitled to a hearing on the suspension if the person files a written request for a hearing with the finance and technology director no later than thirty (30) business after receipt of the notice.

(m) *Suspended party request for hearing.* If a suspended party requests a hearing, the hearing officer shall arrange for a prompt hearing unless the city attorney determines that a hearing at such time is likely to jeopardize an investigation. Unless both parties agree to an extension, the hearing shall not be delayed longer than three (3) months after notice of suspension. A hearing requested under this section shall be conducted, to the extent practicable, in accordance with this chapter.

(n) *Master list for suspension and debarment.* The finance and technology director shall maintain a master list of debarment, suspensions and voluntary exclusions under this chapter. The master list shall include a separate section listing persons voluntarily excluded from participation in city contracts. The master list shall show as a minimum the following information:

(1) The names and vendor number of those persons whom the city has debarred or suspended under this chapter;

(2) The basis of authority for the action;

(3) The period of debarment or suspension, including the expiration date;

(4) The name of the debarring or suspending agency, if the city's debarment or suspension is based on debarment or suspension by another governmental agency; and

(5) A separate section listing persons voluntarily excluded from participation in state contracts.

(o) *Hearing procedures.* If a hearing is required or permitted, the finance and technology director may appoint a hearing officer. The hearing officer shall arrange for a prompt hearing and notify the parties in writing of the time and place of the hearing. The hearing shall be conducted in an informal manner without formal rules of evidence or procedure. The hearing officer may:

(1) Hold pre-hearing conferences to settle, simplify or identify the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding;

(2) Require parties to state their positions concerning the various issues in the proceeding;

(3) Require parties to produce for examination those relevant witnesses and documents under their control;

(4) Rule on motions and other procedural items on matters pending before such officer;

(5) Regulate the course of the hearing and conduct of participants;

(6) Establish time limits for submission of motions or memoranda;

(7) Impose appropriate sanctions against any person failing to obey an order under these procedures, which may include refusing to allow the person to assert or oppose designated claims or defenses, or prohibiting that person from introducing designated matters in evidence; excluding all testimony of an unresponsive or evasive witness; and expelling the person from further participation in the hearing;

(8) Take official notice of any material fact not appearing in evidence in the record, if the fact is among the traditional matters of judicial notice;

(9) Administer oaths or affirmations; and

(10) A transcribed record of the hearing shall be made available at cost to the requesting party.

(p) *Recommendation by the hearing officer*. The hearing officer shall make a recommendation to the finance and technology director based on the evidence presented. The recommendation shall include findings of fact and conclusions of law. The finance and technology director may affirm, modify or reject the hearing officer's recommendation in whole or in part, may remand the matter to the hearing officer with instructions, or make any other appropriate disposition.

(q) *Final decision by the finance and technology director.* A decision by the finance and technology director shall be final. The decision shall be sent within twenty (20) days after the conclusion of the hearing to all parties by personal service or certified mail, return receipt requested. The decision shall state that any party adversely affected may within ten (10) days request a rehearing with the finance and technology director.

(r) *Rehearing of finance and technology director's decision.* Any party, including a procurement officer, who is aggrieved by the finance and technology director's decision may file a written request for rehearing of the decision specifying the particular grounds. The request for rehearing shall be filed with the finance and technology director within ten (10) days after receipt of the decision and shall include any supporting affidavits. The request shall be clearly designated as a "request for rehearing." Rehearings shall be addressed as follows:

(1) The finance and technology director shall within five (5) days after the request is filed notify interested parties of the request by personal service or certified mail, return receipt requested;

(2) An interested party may within ten (10) days after receipt of the notice file a response including opposing affidavits;

(3) Any argument not raised in the request or in a response is waived;

(4) The finance and technology director may require the filing of written briefs and may provide for oral argument;

(5) A rehearing of the decision may be granted for irregularity in the proceedings before the finance and technology director or an abuse of discretion by the finance and technology director, depriving the requesting party of a fair hearing; misconduct of the finance and technology director, his staff or the hearing officer or any party; accident or surprise that could not have been prevented by ordinary prudence; newly discovered material evidence that could not with reasonable diligence have been discovered and produced at the original hearing; excessive or insufficient penalties; error in the admission or rejection of evidence or other error of law occurring at the hearing; or showing that the decision is not justified by the evidence or is contrary to law;

(6) The finance and technology director's decision concerning a request for rehearing shall be in writing and shall state the basis of the decision. A decision granting a rehearing shall specify with particularity the grounds on which the rehearing is granted, and the date, time and place of the rehearing. The rehearing shall cover only those matters specified in the decision; and

(7) The finance and technology director, within the time for filing a request for rehearing under this section, may on his own initiative order a rehearing of his decision for any reason for which he might have granted a rehearing on request of a party.

(s) *Exclusive remedy*. Notwithstanding any law to the contrary, this article shall provide the exclusive procedure for asserting a claim or cause of action against this city arising in relation to any procurement conducted under this chapter.
(Ord. No. 97.55, 12-11-97; Ord. No. 2001.17, 7-26-01; Ord. No. 2007.72, 10-25-07; Ord. No. 2010.02, 2-4-10)

Sec. 26A-24. Intergovernmental and cooperative procurement.

(a) *Applicability*. Agreements entered into pursuant to this article shall be limited to the areas of procurement or materials management.

(b) *Intergovernmental procurement agreements approval.* All agreements entered into pursuant to this article shall be approved by the finance and technology director or designee or city council as necessary.

(c) *Cooperative purchasing authorized.* The city may either participate in, sponsor, conduct or administer a cooperative purchasing agreement for the procurement of any materials, goods or services with one or more eligible procurement units in accordance with an agreement entered into between the participants. Parties under a cooperative purchasing agreement may:

(1) Sponsor, conduct or administer a cooperative agreement for the procurement or disposal of any materials, goods or services;

(2) Cooperatively use materials or services;

(3) Commonly use or share warehousing facilities, capital equipment and other facilities;

(4) Provide personnel, except that the requesting eligible procurement unit may pay the public procurement unit providing the personnel the direct and indirect cost of providing the personnel, in accordance with the agreement;

(5) On request, make available to other public procurement units informational, technical or other services that may assist in improving the efficiency or economy of procurement. The public procurement unit furnishing the informational or technical services has the right to request reimbursement for the reasonable and necessary costs of providing such services; and

(6) The activities described in paragraphs 1 through 5 do not limit the activities of parties under a cooperative purchasing agreement.
(Ord. No. 97.55, 12-11-97; Ord. No. 2001.17, 7-26-01; Ord. No. 2007.72, 10-25-07; Ord. No. 2010.02, 2-4-10)

Sec. 26A-25. Requirements for street sweepers.

Contracts for street sweeping on city streets shall require that street sweeping be conducted with certified PM-10 efficient street sweepers. Street sweepers purchased or leased by the city shall be certified PM-10 efficient street sweepers.
(Ord. No. 2010.27, 7-1-10)

Secs. 26A-26—26A-49. Reserved.

ARTICLE II. MATERIALS MANAGEMENT

Sec. 26A-50. Materials management responsibilities and powers, auctions, offenses.

(a) The finance and technology director or his designee shall be responsible for establishing guidelines for the administration of the materials management function, including the sale, trade, transfer or disposal of surplus materials belonging to the city.

(b) The finance and technology director shall have the responsibility and authority to establish rules and regulations to govern:

(1) The management of materials during their entire life cycle;

(2) The acquisition and distribution of city surplus or excess materials;

(3) The sale, lease or disposal of surplus or excess materials by public auction, competitive sealed bidding, spot bidding, trade-in, negotiated sale, sale at posted prices, auction, trade or transfer, to another public entity, retail sales outlet, or other appropriate methods designated by city rules, regulations and procedures;

(4) The purchase or acquisition of any surplus or excess materials by city employees or the disposal of surplus or excess materials by city departments;

(5) The transfer of excess or surplus fixed asset materials for the purpose of reutilization within the city; and

(6) Rules of attendance and participation at auctions, including expulsion and debarment from an auction or an auction call for bids. Such regulations shall also include procedures for immediate suspension or expulsion of an attendee or participant on grounds specified in the city's rules and regulations. A violation of such rules and regulations is punishable as provided in § 1-7 of the city code.

(Ord. No. 97.55, 12-11-97; Ord. No. 2001.17, 7-26-01; Ord. No. 2005.69, 9-29-05; Ord. No. 2010.02, 2-4-10)

Sec. 26A-51. Disposition of surplus or excess materials generally.

(a) The finance and technology director or his designee may act on behalf of the city in all matters pertaining to establishing rules, regulations and procedures for the disposition of excess or surplus materials.

(b) Unless otherwise authorized by law or city ordinances, rules or regulations, no using department shall transfer, sell, trade, or otherwise dispose of materials owned by the city without written authorization of the department head and the finance and technology director or designee in accordance with the city's rules, regulations and procedures.

(c) A using department shall notify the finance and technology director or his designee of all excess and surplus fixed asset materials on such forms and at such times as prescribed by established city rules, regulations and procedures. The finance and technology director or his designee shall determine the fair market value of excess and surplus fixed asset materials.

(Ord. No. 97.55, 12-11-97; Ord. No. 2001.17, 7-26-01; Ord. No. 2005.69, 9-29-05; Ord. No. 2010.02, 2-4-10)

Sec. 26A-52. Methods of disposal for surplus or excess.

(a) Surplus or excess materials may be offered for sale or lease through competitive sealed bidding, spot bidding, trade-in, sale at posted prices, auction, negotiated sale, or trade, to another public entity, retail sales outlet, or transferred for public purpose as designated by city rules, regulations and procedures.

(b) Competitive sealed bidding shall be advertised and conducted in accordance with city ordinances, rules and regulations.

(1) Copies of the invitation for bid sales shall be available at the city procurement office. The notice for invitation for bid sales shall list the materials offered for sale, their location, availability for inspection, the terms and conditions of sale and instructions to bidders including the place, date, and time for bid opening. Bids shall be opened and read in public; and

(2) The award shall be made in accordance with the invitation for bid sales to the highest responsive and responsible bidder if the price offered by such bidder is acceptable to the finance and technology director or his designee. If the finance and technology director or his designee determines that the bid is not advantageous to the city, the bids may be rejected in whole or in part. The finance and technology director may again solicit bids or may negotiate the sale if the negotiated sale price is higher than the highest responsive and responsible bidder's price.

(c) No employee of a disposing department shall directly or indirectly purchase or agree with another person to purchase surplus or excess materials if the employee is, or has been, directly or indirectly involved in the purchase, disposal, maintenance, operation or preparation for sale of the surplus or excess material. Sworn police officers are exempt from this requirement solely for when they elect to purchase their duty gun as stipulated in subsection (e) below.

(d) No employee, nor agent or relative of an employee, of the city's internal services department shall purchase or acquire, directly or indirectly, any city surplus or excess or scrap property.

(e) Sworn police officers may purchase their duty handgun for one dollar ($1) upon retiring in good standing with twenty (20) or more years of service with the city.
(Ord. No. 97.55, 12-11-97; Ord. No. 2001.17, 7-26-01; Ord. No. 2005.69, 9-29-05; Ord. No. 2008.63, 11-6-08; Ord. No. 2010.02, 2-4-10; Ord. No. O2014.27, 6-26-14)

Sec. 26A-53. Allocation of proceeds from sale, disposal of excess or surplus materials.

All monies received from sale of city surplus or excess materials shall be deposited in the city general fund or other appropriate fund unless otherwise prescribed by law.
(Ord. No. 97.55, 12-11-97; Ord. No. 2005.69, 9-29-05)

Chapter 27

SEWERS AND SEWAGE DISPOSAL

ARTICLE I. SEWERS - PRETREATMENT[1]

DIVISION 1. GENERAL PROVISIONS

Sec. 27-1. Purpose and policy.

(a) This article sets forth uniform requirements for users of the Publicly Owned Treatment Works for the city (hereinafter referred to as "the city") and enables the city to comply with all applicable state and federal laws, including the Clean Water Act (33 United States Code § 1251 et seq.) and the General Pretreatment Regulations (40 Code of Federal Regulations Part 403). The objectives of this article are to:

(1) Prevent the introduction of pollutants into the Publicly Owned Treatment Works that will interfere with its operation and efficient functioning of its parts;

(2) Prevent the introduction of pollutants into the Publicly Owned Treatment Works that will pass through the Publicly Owned Treatment Works, inadequately treated, into receiving waters, or otherwise be incompatible with the Publicly Owned Treatment Works;

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[1] **Editor's Note**—Ord. No. 93.40, 11-18-93, amended Chapter 27 by deleting Articles IV and V thereof (except for Section 27-78 which was moved to a new Article II and renumbered as Section 27-196), renumbered prior Articles I, II, III and VI as Divisions 1, 2, 3 and 4 of Article II, and adopting new Article I on Pretreatment.

Cross references—Plumbing, § 8-600 et seq.; water and sewer extensions to newly developed areas, § 25-81 et seq.; Solid waste, Ch. 28; Water, Ch. 33.

(3) Protect both Publicly Owned Treatment Works personnel who may be affected by wastewater and sludge in the course of their employment and the general public;

(4) Promote reuse and recycling of industrial wastewater and sludge away from the Publicly Owned Treatment Works;

(5) Provide for fees for the equitable distribution of the cost of operation, maintenance, and improvement of the Publicly Owned Treatment Works;

(6) Enable the city to comply with its Arizona Pollutant Discharge Elimination System permit conditions, sludge use and disposal requirements, and any other federal or state laws to which the Publicly Owned Treatment Works is subject;

(7) Promote waste minimization and pollution prevention; and

(8) Protect the environment.

(b) This article shall apply to all persons discharging to the Publicly Owned Treatment Works. This article establishes discharge prohibitions/limitations; authorizes the issuance of wastewater discharge permits; provides for monitoring, compliance, and enforcement activities; establishes administrative review procedures; requires user reporting; and provides for the setting of fees for the equitable distribution of costs resulting from the program established herein.
(Ord. No. 93.40, 11-18-93; Ord. No. 2004.38, 9-30-04)

Sec. 27-2. Administration.

Except as otherwise provided herein, the public works director shall administer, implement, and enforce the provisions of this article. Any powers granted to or duties imposed upon the public works director may be delegated by the public works director to other city personnel, but remain the responsibility of the public works director.
(Ord. No. 93.40, 11-18-93; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Sec. 27-3. Abbreviations.

The following abbreviations, when used in this chapter, shall have the designated meanings:

· ADEQ - Arizona Department of Environmental Quality

· ARS - Arizona Revised Statutes

· AZPDES - Arizona Pollutant Discharge Elimination System

· BMPS - Best Management Practices

· BOD - Biochemical Oxygen Demand

· CFR - Code of Federal Regulations

- COD - Chemical Oxygen Demand
- EPA - U.S. Environmental Protection Agency
- gpd - gallons per day
- IU - Industrial User
- mg/l - milligrams per liter
- NPDES - National Pollutant Discharge Elimination System
- POTW - Publicly Owned Treatment Works
- RCRA - Resource Conservation and Recovery Act
- TCC - Tempe City Code
- SIC - Standard Industrial Classification
- SIU - Significant Industrial User
- SNC - Significant Noncompliance
- TSS - Total Suspended Solids
- µg/l - micrograms per liter
- U.S.C. - United States Code

(Ord. No. 93.40, 11-18-93; Ord. No. 97.08, 2-13-97; Ord. No. 2004.38, 9-30-04; Ord. No. 2007.83, 1-10-08)

Sec. 27-4. Definitions.

Unless a provision explicitly states otherwise, the following terms and phrases, as used in this chapter, shall have the meanings hereinafter designated.

Act or "the Act" means the Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. § 1251 *et seq*.

Approval Authority means the State of Arizona Department of Environmental Quality (ADEQ) or Regional Administrator for Region IX of the U.S. EPA.

Arizona Department of Environmental Quality or ADEQ means the State of Arizona agency granted oversight for pretreatment programs by the U.S. Environmental Protection Agency.

Authorized Representative of the User means:

a. If the user is a corporation:

1. The president, secretary, treasurer, or a vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or

2. The manager of one or more manufacturing, production, or operation facilities employing more than two hundred fifty (250) persons or having gross annual sales or expenditures exceeding twenty-five million dollars ($25,000,000) (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

b. If the user is a partnership or sole proprietorship: a general partner or proprietor, respectively;

c. If the user is a federal, state, or local governmental facility: a director or highest official appointed or designated to oversee the operation and performance of the activities of the government facility, or their designee;

d. The individuals described in subparagraphs a through c, above, may designate another authorized representative if the authorization is in writing, the authorization specifies the individual or position responsible for the overall operation of the facility from which the discharge originates or having overall responsibility for environmental matters for the company, and the written authorization is submitted to the city;

e. A user not falling within one of the above categories must designate as the authorized representative an individual responsible for the overall operation of the facility.

AZPDES means the Arizona Pollutant Discharge Elimination System.

Best Management Practices or BMPS means schedules of activities, pollution treatment practices or devices, prohibitions of practices, good housekeeping practices, pollution prevention, waste minimization, educational practices, maintenance procedures, or other management practices or devices to prevent or reduce the amount of pollutants entering the Publicly Owned Treatment Works.

Biochemical Oxygen Demand or BOD means the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedures for five (5) days at 20° centigrade, usually expressed as a concentration (e.g., mg/l).

Categorical Pretreatment Standard or Categorical Standard means any regulation containing pollutant discharge limits promulgated by EPA in accordance with Sections 307(b) and (c) of the Act (33 U.S.C. § 1317) which apply to a specific category of users and which appear in 40 CFR Chapter I, Subchapter N, Parts 405-471.

Clean Water Act means the Federal Water Pollution Control Act, as amended, 33 United States Code § 1251 et seq.

Control Manhole means an access point into the sanitary sewer for the purpose of collecting a representative sample of wastewater discharge to determine compliance with this chapter. Access points used as control manholes will be approved by the public works director.

Director means the director of public works who is hereby designated by the city to supervise the operation of the city's interest in the POTW, and who is charged with certain duties and responsibilities by this article, or other city personnel designated by the public works director to act on his behalf under this article.

Environmental Protection Agency or EPA means the U.S. Environmental Protection Agency, the federal agency charged with enforcement of the Clean Water Act.

Existing Source means any source of discharge, the construction or operation of which commenced prior to the publication by EPA of proposed categorical pretreatment standards, which will be applicable to such source if the standard is thereafter promulgated in accordance with Section 307 of the Act.

Grab Sample means a sample which is taken from a wastestream without regard to the flow in the wastestream and over a period of time not to exceed fifteen (15) minutes.

Indirect Discharge or Discharge means the introduction of pollutants into the POTW from any Nondomestic Source regulated under any laws, rules or regulations of the United States, the State of Arizona or any political subdivision thereof.

Interference means a discharge, which alone or in conjunction with a discharge or discharges from other sources, inhibits or disrupts the POTW, its treatment processes or operations or its sludge processes, use or disposal; and therefore, is a cause of a violation of any applicable NPDES or AZPDES permit or of the prevention of sewage sludge use or disposal in compliance with any of the following statutory/regulatory provisions or permits issued thereunder, or any more stringent state or local regulations: Section 405 of the Act; the Solid Waste Disposal Act, including Title II commonly referred to as the Resource Conservation and Recovery Act (RCRA); any state regulations contained in any state sludge management plan prepared pursuant to Subtitle D of the Solid Waste Disposal Act; the Clean Air Act; the Toxic Substances Control Act; and the Marine Protection, Research, and Sanctuaries Act.

New Source means:

a. Any building, structure, facility, or installation from which there is (or may be) a discharge of pollutants, the construction of which commenced after the publication of proposed pretreatment standards under Section 307(c) of the Act which will be applicable to such source if such standards are thereafter promulgated in accordance with that section, provided that:

    1. The building, structure, facility, or installation is constructed at a site at which no other source is located; or

2. The building, structure, facility, or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or

3. The production or wastewater generating processes of the building, structure, facility, or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source, should be considered;

b. Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility, or installation meeting the criteria of subparagraph a.1 or a.3 above but otherwise alters, replaces, or adds to existing process or production equipment;

c. Construction of a new source as defined under this paragraph has commenced if the owner or operator has:

1. Begun, or caused to begin, as part of a continuous onsite construction program

(i) any placement, assembly, or installation of facilities or equipment; or

(ii) significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or

2. Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this paragraph.

Noncontact Cooling Water means water used for cooling which does not come into direct contact with any raw material, intermediate product, waste product, or finished product.

Nondomestic Discharge or Nondomestic Source means discharges of any substances other than human excrement and household gray water derived from the ordinary living process of residential family homes.

Pass Through means a discharge which exits the POTW into waters of the United States in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of any applicable AZPDES permit, including an increase in the magnitude or duration of a violation.

Person means any individual, partnership, copartnership, firm, company, corporation, limited liability company, association, joint stock company, trust, estate, governmental entity, or any other legal entity; or their legal representatives, agents, or assigns. This definition includes all users and all federal, state, and local governmental entities.

pH means a measure of the acidity or alkalinity of a solution, expressed in standard units.

Pollutant means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, medical wastes, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, municipal, agricultural and industrial wastes, commercial food waste including but not limited to fats, oils, and grease, and certain characteristics of wastewater (e.g., pH, temperature, TSS, turbidity, color, BOD, COD, toxicity, or odor).

Pretreatment means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to, or in lieu of, introducing such pollutants into the POTW. This reduction or alteration can be obtained by physical, chemical, or biological processes; by process changes; or by other means. This reduction or alteration cannot be accomplished by diluting the concentration of the pollutants unless allowed by an applicable pretreatment standard.

Pretreatment Device means equipment, material or structures to reduce, eliminate, or alter the nature of pollutant properties in wastewater before, or in lieu of, introducing pollutants into the POTW.

Pretreatment Requirements means any substantive or procedural requirement including Best Management Practices (BMPS) related to pretreatment imposed on a user as may have been established pursuant to the laws or regulations of the United States, State of Arizona or the city, other than a pretreatment standard.

Pretreatment Sludge means the waste byproduct from a commercial or manufacturing process that is removed as the result of cleaning the pretreatment device, including but not limited to plating sludge, decant water, lint, sand, fats, oil and grease and solids.

Pretreatment Standards or Standards means prohibited discharge standards, categorical pretreatment standards, and local limits as may have been established pursuant to the laws or regulations of the United States, the State of Arizona, or of the city.

Prohibited Discharge Standards or Prohibited Discharges means absolute prohibitions against the discharge of certain substances and limitations on others; these prohibitions appear in Section 27-10 of this article.

Publicly Owned Treatment Works or POTW means a “treatment works,” as defined by Section 212 of the Act (33 U.S.C. § 1292) in which the city owns an interest. This definition includes any devices or systems used in the collection, storage, treatment, recycling, and reclamation of sewage or industrial wastes of a liquid nature and any conveyances which convey wastewater to a treatment plant.

Sanitary Sewer Overflow (SSO) means the discharge of sanitary sewage into the environment.

Septic Tank Waste means any sewage from holding tanks such as vessels, chemical toilets, campers, trailers, and septic tanks.

Significant Industrial User or SIU means:

a. A user subject to categorical pretreatment standards; or

b. A user that:

1. Discharges an average of twenty-five thousand (25,000) gpd or more of process wastewater to the POTW (excluding sanitary, noncontact cooling, and boiler blowdown wastewater);

2. Contributes a process wastestream which makes up five (5) percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or

3. Is designated as such by the public works director on the basis that the user has a reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement.

c. Upon a finding that a user meeting the criteria in subparagraph b has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement, the public works director may at any time, on his own initiative or in response to a petition received from a user, and in accordance with procedures in 40 CFR 403.8(f)(6), determine that such user should not be considered a significant industrial user.

Slug Load or Slug means any discharge at a flow rate or concentration which could cause a violation of the prohibited discharge standards in Section 27-10 of this article.

Standard Industrial Classification (SIC) Code means a classification pursuant to the *Standard Industrial Classification Manual* issued by the United States Office of Management and Budget.

Storm Water means any flow occurring during or following any form of natural precipitation, and resulting from such precipitation, including snowmelt.

Suspended Solids means the total suspended matter that floats on the surface of, or is suspended in, water, wastewater, or other liquid, and which is removable by laboratory filtering or measurable by laboratory process.

User or Industrial User or Nondomestic User means a source of discharge into the POTW from a nondomestic use.

Wastewater means liquid and water-carried industrial wastes and sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities, and institutions, whether treated or untreated, which are contributed to the POTW.

Wastewater Treatment Plant or Treatment Plant means that portion of the POTW which is designed to provide treatment of municipal sewage and industrial waste.
(Ord. No. 93.40, 11-18-93; Ord. No. 97.08, 2-13-97; Ord. No. 2001.17, 7-26-01; Ord. No. 2004.38, 9-30-04; Ord. No. 2007.83, 1-10-08; Ord. No. 2010.02, 2-4-10)

Secs. 27-5—27-9. Reserved.

DIVISION 2. GENERAL SEWER USE REQUIREMENTS

Sec. 27-10. Prohibited discharges.

(a) *General Prohibitions.* No person shall introduce or cause to be introduced into the POTW any pollutant or wastewater which causes pass through or interference. These general prohibitions apply to all persons discharging to the POTW whether or not they are subject to categorical pretreatment standards or any other national, state, or local pretreatment standards or requirements.

(b) *Specific Prohibitions.* No person shall introduce or cause to be introduced into the POTW the following pollutants, substances, or wastewater:

(1) Pollutants which create a fire or explosive hazard in the POTW, including, but not limited to, wastestreams with a closed-cup flashpoint of less than 140°F (60°C) using the test methods specified in 40 CFR 261.21;

(2) Wastewater having a pH less than 5.0 or more than 10.5, or otherwise causing corrosive structural damage to the POTW or equipment;

(3) Solid or viscous substances, fats, oils and grease, in amounts or sizes which will cause obstruction of the flow in the POTW but in no case solids greater than one-half inch(es) (1/2") or one and twenty-seven hundredths centimeter(s) (1.27 cm) in any dimension;

(4) Pollutants, including oxygen-demanding pollutants (BOD, etc.), released in a discharge at a flow rate and/or pollutant concentration which, either singly or by interaction with other pollutants, will cause interference with the POTW;

(5) Wastewater having a temperature greater than 150°F (66°C), or which will inhibit biological activity in the treatment plant resulting in interference, but in no case wastewater which causes the temperature at the introduction into the treatment plant to exceed 104°F (40°C);

(6) Petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin, in amounts that may cause interference or pass through or which may form persistent oil emulsions;

(7) Pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems;

(8) Trucked or hauled pollutants or any other connection or discharge not otherwise permitted, except at discharge points designated by the public works director in accordance with Section 27-24 of this article;

(9) Noxious or malodorous liquids, gases, solids, or other wastewater which, either singly or by interaction with other wastes, are sufficient to create a public nuisance or a hazard to life, or to prevent entry into the sewers for maintenance or repair;

(10) Wastewater which imparts color which cannot be removed by the treatment process, such as, but not limited to, dye wastes and vegetable tanning solutions, which consequently imparts color to the treatment plant's effluent, thereby violating any applicable NPDES or AZPDES permit;

(11) Wastewater containing any radioactive wastes or isotopes except in compliance with applicable state or federal regulations;

(12) Storm water, surface water, ground water, artesian well water, roof runoff, subsurface drainage, condensate, deionized water, noncontact cooling water, and unpolluted wastewater, unless specifically authorized by the public works director;

(13) Sludges, screenings, or other residues from the pretreatment of industrial wastes;

(14) Sludges, screenings, debris, silt or other nonliquid residues from the cleaning of the sanitary sewer collection system;

(15) Wastewater causing, alone or in conjunction with other sources, the treatment plant's effluent to fail a toxicity test;

(16) Detergents, surface-active agents, or other substances which may cause excessive foaming in the POTW;

(17) Any of the following prohibited substances:

4,4’-DDE
4,4’-DDT
Aldrin
BHC-Alpha
BHC-Beta
BHC-Gamma (Lindane)
Heptachlor
Heptachlor Epoxide
Polyclorinated Biphenyl Compounds (PCBs)

(18) Wastewater causing a reading on an explosion hazard meter at the point of discharge into the POTW, or at any point in the POTW, of more than ten percent (10%) of the Lower Explosive Limit of the meter; or

(19) Any water or waste exceeding the limits for the following substances that are expressed in the total form except if otherwise stated:

Instantaneous Maximum Allowable Discharge Limitations	
Substance	Effective on January 1, 2005
Benzene	35 (µg/l)*
Chloroform	2000 (µg/l)

*µg/l = micrograms per liter

(c) *Wastewater Discharge Permit Required.* No person shall discharge nondomestic wastewater unless permitted as follows:

(1) Direct or indirect discharge from a nondomestic source to the city's sanitary sewer system is prohibited without a permit issued by the public works department; and

(2) Pollutants, substances, or wastewater prohibited by this section shall not be processed or stored in such a manner that they could be discharged to the POTW. No industrial waste or sewage shall be discharged to a storm sewer culvert, collection system or waters of the state unless properly permitted.

(Ord. No. 93.40, 11-18-93; Ord. No. 2001.17, 7-26-01; Ord. No. 2004.38, 9-30-04; Ord. No. 2007.83, 1-10-08; Ord. No. 2010.02, 2-4-10; Ord. No. 2010.04, 3-25-10)

Sec. 27-11. National categorical pretreatment standards.

The categorical pretreatment standards found at 40 CFR Chapter I, Subchapter N, Parts 405-471 are hereby incorporated.

(1) Where a categorical pretreatment standard is expressed only in terms of either the mass or the concentration of a pollutant in wastewater, the public works director may impose equivalent concentration or mass limits in accordance with 40 CFR 403.6(c).

(2) When wastewater subject to a categorical pretreatment standard is mixed with wastewater not regulated by the same standard, the public works director shall impose an alternate limit using the combined wastestream formula in 40 CFR 403.6(e).

(3) A user may obtain a variance from a categorical pretreatment standard, pursuant to the procedural and substantive provisions in 40 CFR 403.13.

(4) A user may obtain a net gross adjustment to a categorical standard in accordance with 40 CFR 403.15.

(Ord. No. 93.40, 11-18-93; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Sec. 27-12. Local limits.

(a) All persons owning or operating facilities or engaged in activities that will or may reasonably be expected to result in pollutants entering the City of Tempe sanitary sewer system or affecting the sanitary sewer system or affecting the POTW, shall undertake all practicable best management practices identified by the public works director to minimize the discharge of

pollutants. Such measures shall include the requirements imposed by this chapter, any applicable NPDES or AZPDES permits, and any written guidelines promulgated for general use by the public works director.

(b) The public works director shall have the authority to:

(1) Establish limitations for individual users or classes of users for various pollutants, materials, waters, or wastes that can be accepted into the sanitary sewer system;

(2) Specify those pollutants, materials, waters, or wastes that are prohibited from entering the sanitary sewer system;

(3) Identify those pollutants, materials, waters, or wastes that shall be controlled with best management practices; and

(4) Require individual users or classes of users to implement best management practices for any pollutant.

(c) All affected individual users or classes of users shall comply with the prohibitions and effluent limitations established pursuant to this section, and with any best management practices required by the public works director.

(d) All prohibitions and effluent limitations so established and all best management practices identified by the public works director will be placed on file with the city clerk and will become effective and enforceable on the thirty-first (31st) day after the date of filing.

(e) The following pollutant limitations are established to protect the POTW against pass through and interference. No user shall discharge wastewater exceeding the limits set forth below:

Daily Average Effluent Limitations	
Substance	Effective on January 1, 2005
Arsenic	0.13 mg/l*
Cadmium	0.047 mg/l
Copper	1.5 mg/l
Cyanide	2.0 mg/l
Lead	0.41 mg/l
Mercury	0.0023 mg/l
Selenium	0.10 mg/l
Silver	1.2 mg/l
Zinc	3.5 mg/l

*mg/l = milligrams per liter

All concentrations are expressed in the "total" form unless indicated otherwise. The public works director may impose mass limitations in addition to, or in place of, the concentration-based limitations above.
(Ord. No. 93.40, 11-18-93; Ord. No. 2001.17, 7-26-01; Ord. No. 2004.38, 9-30-04; Ord. No. 2010.02, 2-4-10)

Sec. 27-13. City's right of revision.

The city reserves the right to establish new, additional or more stringent standards or requirements on discharges to the POTW.
(Ord. No. 93.40, 11-18-93)

Sec. 27-14. Dilution.

No user shall increase the use of process water, or in any way attempt to dilute a discharge, as a partial or complete substitute for adequate treatment to achieve compliance with a discharge limitation unless expressly authorized by an applicable pretreatment standard or requirement. The public works director may impose mass limitations on users who are using dilution to meet applicable pretreatment standards or requirements, or in other cases when the imposition of mass limitations is appropriate.
(Ord. No. 93.40, 11-18-93; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Sec. 27-15. No tampering.

(a) It shall be unlawful for any person to tamper with, damage, or destroy any monitoring equipment with the knowledge or intention of altering the sampling analysis or readings or causing damage or destruction of the monitoring/sampling equipment being utilized to determine compliance with this article.

(b) It shall be unlawful for any person to tamper with a manhole, and to enter any city manhole unless authorization has been obtained in writing from the public works director prior to entry.

(c) It is unlawful for any person to tamper with a pretreatment device. Tampering includes but is not limited to non-authorized, non-permitted alteration of the original equipment or structure design, discharge of waste into the pretreatment device from any source other than originally intended, or removal of a source of discharge from the pretreatment device as originally intended or designed.
(Ord. No. 93.40, 11-18-93; Ord. No. 2004.38, 9-30-04; Ord. No. 2007.83, 1-10-08; Ord. No. 2010.02, 2-4-10)

Secs. 27-16—27-20. Reserved.

DIVISION 3. PRETREATMENT OF WASTEWATER

Sec. 27-21. Pretreatment facilities.

Users shall provide wastewater treatment as necessary to comply with this article and shall achieve compliance with all categorical pretreatment standards, local limits, and the prohibitions set out in Section 27-10 of this article within the time limitations specified by EPA, the state, or the public works director, whichever is more stringent. Any facilities necessary for compliance shall be provided, operated, and maintained at the user's expense. Detailed plans describing such facilities and operating procedures shall be submitted to the public works director for review, and shall be acceptable to the public works director before such facilities are constructed. The review of such plans and operating procedures shall in no way relieve the user from the responsibility of modifying such facilities as necessary to produce a discharge in compliance with the provisions of this article.
(Ord. No. 93.40, 11-18-93; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Sec. 27-22. Additional pretreatment measures.

(a) Whenever deemed necessary, the public works director may require users to restrict their discharge during peak flow periods, designate that certain wastewater be discharged only into specific sewers, relocate and/or consolidate points of discharge, separate sewage wastestreams from industrial wastestreams, and such other conditions as may be necessary to protect the POTW and determine the user's compliance with the requirements of this article.

(b) The public works director may require any user discharging into the POTW to install and maintain, on their property and at their expense, a suitable storage and flow-control facility to ensure equalization of flow. A wastewater discharge permit may be issued solely for flow equalization.

(c) The public works director is authorized to develop and submit to the city council for its approval by resolution rules and procedures to require users to install, clean, maintain, repair and allow inspection of grease, lint, and sand/oil interceptors, oil/water separators, and hair or grease traps as needed for the proper handling of wastewater containing excessive amounts of fats, oils, grease, lint or sand; except that such interceptors or traps shall not be required for residential users. Requirements for the proper handling of fats, oils, grease, lint, sand and solids in wastewater are as follows:

(1) For the food service industry, grease interceptors and grease traps shall be required, installed, and maintained as specified in this article and the rules and procedures approved in accordance with this section. For the purposes of improving the sustainability of the city’s publicly owned treatment works and exploring the development of waste fats, oils and grease as a renewable energy supply, the rules and procedures approved in accordance with this section may provide for:

(i) Measures to promote compliance with the requirements for installation of grease interceptors and grease traps; and

(ii) City-procured maintenance and cleaning services for interceptors and traps used by food service establishments;

(2) Lint, and sand/oil interceptors and oil/water separators shall be installed in compliance with the plumbing code and the rules and procedures approved in accordance with this section; and

(3) All interceptors, separators and traps shall be of the type and capacity set forth by the rules and procedures approved in accordance with this section and shall be located to be easily accessible for cleaning and inspection. Interceptors, separators and traps shall be inspected, cleaned, and repaired regularly by the user at the user's expense in accordance with the rules and procedures approved in accordance with this section. The user shall keep records of all cleaning, repair and maintenance for at least three (3) years on the site where the interceptor, separator or trap is located. Such records shall be available for inspection by the public works director upon request.

(d) The method for determining the size of traps or interceptors is the drainage fixture unit value. The minimum size for all interceptors is a capacity of five hundred (500) gallons and the maximum size for all interceptors is a capacity of twenty-five hundred (2,500) gallons. Interceptors must be constructed with at least two (2) chambers. Sizing for all traps is a minimum of a fifty (50) gallon per minute, one hundred (100) pound capacity with the flow control valve installed in a manner that provides access at all times. The appropriate size for interceptors and traps is determined as follows:

(1) *Interceptor Sizing.* The interceptor shall be sized using the drainage fixture-unit value as defined in the following table. Using the drain outlet or trap size, these sizes are converted to discharge rates on the basis that one fixture-unit equals 7.5 gpm.

Fixture Outlet or Trap Size (Inches)	Drainage Fixture-Unit Value	Gpm Equivalent
1 ¼	1	7.5
1 ½	2	15.0
2	3	22.0
2 ½	4	30.0
3	5	37.5
4	6	45.0
Floor Drains (All Sizes)	2	15.0
Dishwashers	Double Size	

(2) *Calculating Interceptor Size.* The formula to calculate the size of the interceptor is:

a. Determine total fixture-unit value by multiplying fixture type count by drainage value;

b. Total all values;

c. Determine total flow by multiplying total value by flow rate of 3 gpm;

d. Multiply total flow by 12; and

e. Round up to the next nearest size interceptor.

(3) *Requirements for Interceptors.* The interceptor shall be:

a. A minimum of five hundred (500) gallon capacity, two (2) chamber concrete container (fiber glass and/or other type material must be approved by the public works director);

b. When calculated to have a capacity of seven hundred fifty (750) gallons or more, the interceptor must have three (3) chambers, each with a manway;

c. Constructed with inlet piping with a ninety degree (90º) elbow and minimum of an eighteen (18) inch down spout;

d. Constructed with outlet piping with a tee connection and a threaded cover with a minimum of an eighteen (18) inch down spout;

e. Installed with a two (2) way clean-out within five (5) feet before and five (5) feet after the interceptor; and

f. Constructed with the appropriate traffic rated cover. The cover(s) must not be marked with any wording indicating it is owned by the City of Tempe.

(4) *Grease Trap Installation and Sizing*. Grease traps are allowed only when there are four (4) or fewer than four (4) fixtures used for food preparation. Any facility installing a dishwasher shall install a grease interceptor. For the purpose of sizing a grease trap, a fixture means the entire unit, e.g., a three (3) compartment sink is considered one unit. Grease traps must be installed as follows:

a. A grease trap shall be installed whenever a three (3) compartment sink is required by Maricopa County;

b. The minimum size grease trap to be installed shall be rated no smaller than fifty (50) gallon-per-minute with a one hundred (100) pound grease capacity; and

c. A flow restriction valve shall be installed upstream of the grease trap and vented properly. If placed below floor level the flow restriction valve must be installed in a manner which allows for inspection and maintenance.

(e) Except for domestic sources, users shall not install or replace equipment designed to convert garbage or solid waste into liquefied waste and introduce such waste into the POTW by means of a garbage grinder/disposal. Disposal of garbage and solid waste shall be disposed of as solid waste.

(f) Users with the potential to discharge flammable substances may be required to install and maintain an approved combustible gas detection meter.
(Ord. No. 93.40, 11-18-93; Ord. No. 2001.17, 7-26-01; Ord. No. 2004.38, 9-30-04; Ord. No. 2007.83, 1-10-08; Ord. No. 2010.02, 2-4-10; Ord. No. 2012.19, 4-12-12)

Sec. 27-23. Accidental discharge/slug control plans.

The public works director shall evaluate whether each significant industrial user (SIU), and other users as may be designated by the public works director, needs an accidental discharge/slug control plan within thirty (30) days of issuing the initial wastewater discharge permit and upon the renewal of any subsequent wastewater discharge permit. The public works director may require any user to develop, submit for approval, and implement such a plan. An accidental discharge/slug control plan shall address, at a minimum, the following:

(1) Description of discharge practices, including nonroutine batch discharges;

(2) Description of stored chemicals;

(3) Procedures for immediately notifying the public works director of any accidental or slug discharge, as required by Section 27-56 of this article; and

(4) Procedures to prevent adverse impact from any accidental or slug discharge. Such procedures include, but are not limited to, inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site runoff, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants, including solvents, and/or measures and equipment for emergency response.
(Ord. No. 93.40, 11-18-93; Ord. No. 2001.17, 7-26-01; Ord. No. 2007.83, 1-10-08; Ord. No. 2010.02, 2-4-10)

Sec. 27-24. Hauled wastewater.

(a) Septic tank waste may be introduced into the POTW only at locations designated by the public works director, and at such times as are established by the public works director. Such waste shall not violate Division 2 of this article or any other requirements established by the city. The public works director may require septic tank waste haulers to obtain wastewater discharge permits.

(b) The public works director shall require haulers of industrial waste and nonhazardous liquid waste operating within the city to obtain wastewater discharge or pumping permits. The public works director may require generators of hauled industrial waste to obtain wastewater discharge permits. The public works director also may prohibit the disposal of hauled industrial and nonhazardous liquid waste. The discharge of hauled industrial waste is subject to all other requirements of this article.

(c) Industrial waste and nonhazardous liquid waste haulers may discharge loads only at locations designated by the public works director. No load may be discharged without prior consent of the public works director. The public works director may collect samples of each hauled load to ensure compliance with applicable standards. The public works director may require the industrial waste hauler to provide a waste analysis of any load prior to discharge.

(d) Industrial waste and nonhazardous liquid waste haulers must provide a waste-tracking form for every load. This form shall include, at a minimum, the name and address of the industrial waste hauler, permit number, truck identification, names and addresses of sources of waste, and volume and characteristics of waste. The form shall identify the type of industry IU, known or suspected waste constituents, and whether any wastes are RCRA hazardous wastes.
(Ord. No. 93.40, 11-18-93; Ord. No. 2001.17, 7-26-01; Ord. No. 2007.83, 1-10-08; Ord. No. 2010.02, 2-4-10)

Sec. 27-25. Disposal of pretreatment sludges.

Any sludge or other material removed from the industrial waste by the pretreatment facility shall be disposed of in accordance with applicable federal, state and local laws.
(Ord. No. 93.40, 11-18-93)

Secs. 27-26—27-30. Reserved.

DIVISION 4. WASTEWATER DISCHARGE PERMIT APPLICATION

Sec. 27-31. Wastewater analysis.

When requested by the public works director, a user must submit information on the nature and characteristics of its wastewater within forty-five (45) days of the request. The public works director is authorized to prepare a form for this purpose and may periodically require users to update this information.
(Ord. No. 93.40, 11-18-93; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Sec. 27-32. Wastewater discharge permit requirement.

(a) A permit to discharge wastewater to the city's sanitary sewer system is issued to all nondomestic users who meet the requirements of this section.

(b) Before discharging directly or indirectly to the city's sanitary sewer system, all nondomestic users shall complete and submit to the public works director a notice of intent (NOI) to discharge. The NOI shall be submitted on a form provided by the public works department and shall include the following information:

(1) Business name;

(2) Business address;

(3) Business owner;

(4) Owner's mailing address;

(5) Type of business;

(6) Business premise status; and

(7) A statement signed by the business owner or operator certifying that the user understands the requirements of this section and has a system in place to ensure the requirements of this section are met.

(c) All nondomestic users discharging pursuant to this section shall:

(1) Comply with all applicable state and federal laws, including the Clean Water Act (33 United States Code § 1251 et seq.) and the general pretreatment regulations (40 Code of Federal Regulations Part 403);

(2) Not introduce pollutants into the publicly owned treatment works that will interfere with its operation and efficient functioning of the system;

(3) Conduct periodic maintenance of the private system including but not limited to cleaning all pretreatment devices in accordance with the public works department policies and Section 27-22 of this article;

(4) Take all necessary actions to prevent the discharge of sewage from the user's private system. If a sanitary sewer overflow (SSO) occurs, the user shall mitigate the SSO and properly sanitize any area that could create a public health hazard; and

(5) Notify the public works department immediately if an SSO enters the public right-of-way and comply with Section 27-197 of this chapter.

(d) No significant industrial user (SIU) shall discharge wastewater into the POTW without first obtaining a Class I wastewater discharge permit from the public works director, except that a SIU that has filed a timely application pursuant to Section 27-33 of this article may continue to discharge for the time period specified therein.

(e) The public works director may require other users to obtain a Class II, III, or IV wastewater discharge permits as necessary to carry out the purposes of this article.

(f) Any violation of the terms and conditions of a wastewater discharge permit shall be deemed a violation of this article and subjects the wastewater discharge permittee to the sanctions set out in Divisions 10 through 12 of this article. Obtaining a wastewater discharge permit does not relieve a permittee of its obligation to comply with all federal and state pretreatment standards or requirements or with any other requirements of federal, state, and local law.
(Ord. No. 93.40, 11-18-93; Ord. No. 2001.17, 7-26-01; Ord. No. 2007.83, 1-10-08; Ord. No. 2010.02, 2-4-10)

Sec. 27-33. Wastewater discharge permitting: existing connections.

Any user not permitted under existing pretreatment requirements who is required to obtain a wastewater discharge permit, who was discharging to the POTW prior to the effective date of this article and who wishes to continue such discharges in the future, shall, within thirty (30) days after the effective date of this article, apply to the public works director for a wastewater discharge permit in accordance with this article, and shall not cause or allow discharges to the POTW to continue after thirty (30) days of the effective date of this article except in accordance with a wastewater discharge permit issued by the public works director. Permits issued by the city, pursuant to prior pretreatment requirements, shall remain valid for their stated terms or until terminated or amended pursuant to this article.
(Ord. No. 93.40, 11-18-93; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Sec. 27-34. Wastewater discharge permitting: new connections.

Any user required to obtain a wastewater discharge permit who proposes to begin or recommence discharging into the POTW must obtain such permit prior to the beginning or recommencing of such discharge.
(Ord. No. 93.40, 11-18-93)

Sec. 27-35. Wastewater discharge information.

The public works director may require all users to submit either independently or as part of an application the following information:

(1) All information required by Section 27-51(b) of this article;

(2) Description of activities, facilities, and plant processes on the premises, including a list of all raw materials and chemicals used or stored at the facility;

(3) Number and type of employees, hours of operation, and proposed or actual hours of operation;

(4) Each product produced by type, amount, process or processes, and rate of production;

(5) Type and amount of raw materials processed and disposal methods (average and maximum per day);

(6) Site plans, floor plans, mechanical and plumbing plans, and details to show all sewers, floor drains, and appurtenances by size, location, and elevation, and all points of discharge;

(7) Time and duration of discharges; and

(8) Any other information as may be deemed necessary by the public works director to evaluate the wastewater discharge permit application.

Incomplete or inaccurate applications will not be processed and will be returned to the user for revision.
(Ord. No. 93.40, 11-18-93; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Sec. 27-36. Application signatories and certification.

(a) All wastewater discharge permit applications and user reports must be signed by an authorized representative of the user and contain the following certification statement:

> "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

(b) The person signing the permit application and/or user permit shall sign on behalf of the user and together with the user will be and remain personally liable until properly replaced by another person indicating themselves to be the authorized representative or user responsible for the operation of the facility either upon a new permit or transfer pursuant to Section 27-45.
(Ord. No. 93.40, 11-18-93)

Sec. 27-37. Wastewater discharge permit decisions.

The public works director will evaluate the data furnished by the user and may require additional information. Within sixty (60) days of receipt of a complete wastewater discharge permit application, the public works director will determine whether or not to issue a wastewater discharge permit. The public works director may deny any application for a wastewater discharge permit or place upon it such conditions and restrictions as authorized by this chapter.
(Ord. No. 93.40, 11-18-93; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Secs. 27-38—27-40. Reserved.

DIVISION 5. WASTEWATER DISCHARGE PERMIT ISSUANCE PROCESS

Sec. 27-41. Wastewater discharge permit duration.

A wastewater discharge permit shall be issued for a specified time period, not to exceed five (5) years from the effective date of the permit. A wastewater discharge permit may be issued for a period less than five (5) years, at the discretion of the public works director. Each wastewater discharge permit will indicate a specific date upon which it will expire.
(Ord. No. 93.40, 11-18-93; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Sec. 27-42. Wastewater discharge permit contents.

A wastewater discharge permit shall include such conditions as are deemed reasonably necessary by the public works director to prevent pass through or interference, protect the quality of the water body receiving the treatment plant's effluent, protect worker health and safety, facilitate sludge management and disposal, and protect against damage to the POTW.

(1) Wastewater discharge permits for SIUs must contain and for all other users permitted by the public works director may contain:

a. A statement that indicates wastewater discharge permit duration, which in no event shall exceed five (5) years;

b. A statement that the wastewater discharge permit is nontransferable without prior notification to the public works director in accordance with Section 27-45 of this article, and provisions for furnishing the new owner or operator with a copy of the existing wastewater discharge permit;

c. Effluent limits based on applicable pretreatment standards;

d. Self monitoring, sampling, reporting, notification, and record-keeping requirements. These requirements shall include an identification of pollutants to be monitored, sampling location(s), sampling frequency, and sample type(s) based on federal, state, and local law; and

e. A statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements, and any applicable compliance schedule. Such schedule may not extend the time for compliance beyond that required by applicable federal, state, or local law.

(2) Wastewater discharge permits may contain the following conditions:

a. Limits on the average and/or maximum rate of discharge, time of discharge, and/or requirements for flow regulation and equalization;

b. Requirements for the installation of pretreatment technology, pollution control, or construction of appropriate containment devices, designed to reduce, eliminate, or prevent the introduction of pollutants into the treatment works;

c. Requirements for the development and implementation of spill control plans or other special conditions including management practices necessary to adequately prevent accidental, unanticipated, or nonroutine discharges;

d. Development and implementation of waste minimization plans to reduce the amount of pollutants discharged to the POTW;

e. The unit charge or schedule of user charges and fees for the management of the wastewater discharged to the POTW;

f. Requirements for installation and maintenance of inspection and sampling facilities and equipment;

g. A statement that compliance with the wastewater discharge permit does not relieve the permittee of responsibility for compliance with all applicable federal and state pretreatment standards, including those which become effective during the term of the wastewater discharge permit; and

h. Other conditions as deemed appropriate by the public works director to ensure compliance with this article, and state and federal laws, rules, and regulations.

(Ord. No. 93.40, 11-18-93; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Sec. 27-43. Wastewater discharge permit appeals.

The public works director shall provide notice of the issuance of a wastewater discharge permit to the applicant. Any permit applicant or permittee (aggrieved party) may petition the public works director to reconsider the terms of a wastewater discharge permit within twenty (20) days of notice of its issuance.

(1) Failure to submit a timely petition for review shall be deemed to be a waiver of the administrative appeal.

(2) In its petition, the appealing party must indicate the wastewater discharge permit provisions objected to, the reasons for this objection, and the alternative condition, if any, it seeks to place in the wastewater discharge permit. If appeal is from denial the appeal should set forth all reasons the application for permit, renewal or reissuance should have been granted.

(3) The effectiveness of the wastewater discharge permit shall not be stayed pending the appeal.

(4) If the public works director fails to act within thirty (30) days, a request for reconsideration shall be deemed to be denied. Decisions not to reconsider a wastewater discharge permit, not to issue a wastewater discharge permit, or not to modify a wastewater discharge permit shall be considered final administrative actions for purposes of judicial review.

(5) Aggrieved parties seeking judicial review of the final administrative wastewater discharge permit decision must do so by filing a special action petition with the Arizona Superior Court for Maricopa County within thirty (30) days of final administrative action. This article cannot confer jurisdiction upon the Arizona Superior Court for Maricopa County but only establishes when action may be ripe and administrative remedies have been exhausted.

(Ord. No. 93.40, 11-18-93; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Sec. 27-44. Wastewater discharge permit modification.

The public works director may modify a wastewater discharge permit for good cause, including, but not limited to, the following reasons:

(1) To incorporate any new or revised federal, state, or local pretreatment standards or requirements;

(2) To address significant alterations or additions to the user's operation, processes, or wastewater volume or character since the time of wastewater discharge permit issuance;

(3) A change in the POTW that requires either a temporary or permanent reduction or elimination of the authorized discharge;

(4) Information indicating that the permitted discharge poses a threat to the POTW, city personnel, personnel of other jurisdictions, or the receiving waters;

(5) Violation of any terms or conditions of the wastewater discharge permit;

(6) Misrepresentations or failure to fully disclose all relevant facts in the wastewater discharge permit application or in any required reporting;

(7) Revision of or a grant of variance from categorical pretreatment standards pursuant to 40 CFR 403.13;

(8) To correct typographical or other errors in the wastewater discharge permit; or

(9) To reflect a transfer of the facility ownership or operation to a new owner or operator.

(Ord. No. 93.40, 11-18-93; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Sec. 27-45. Wastewater discharge permit transfer.

Wastewater discharge permits may be transferred to a new owner or operator only if the permittee gives at least sixty (60) days advance notice to the public works director and the public works director approves the wastewater discharge permit transfer. The notice to the public works director must include a written certification by the new owner or operator which:

(1) States that the new owner and/or operator has no immediate intent to change the facility's operations and processes;

(2) Identifies the specific date on which the transfer is to occur; and

(3) Acknowledges full responsibility for complying with the existing wastewater discharge permit.

Failure to provide advance notice of a transfer renders the wastewater discharge permit void as of the date of facility transfer.
(Ord. No. 93.40, 11-18-93; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Sec. 27-46. Wastewater discharge permit revocation.

The public works director may revoke a wastewater discharge permit for good cause, including, but not limited to, the following reasons:

(1) Failure to notify the public works director of significant changes to the wastewater prior to the changed discharge;

(2) Failure to provide prior notification to the public works director of changed conditions pursuant to Section 27-55 of this article;

(3) Misrepresentation or failure to fully disclose all relevant facts in the wastewater discharge permit application;

(4) Falsifying self-monitoring reports;

(5) Tampering with monitoring equipment;

(6) Refusing to allow the public works director timely access to the facility premises and records;

(7) Failure to meet effluent limitations;

(8) Failure to pay fines;

(9) Failure to pay sewer charges;

(10) Failure to meet compliance schedules;

(11) Failure to complete a wastewater survey or the wastewater discharge permit application;

(12) Failure to provide advance notice of the transfer of business ownership of a permitted facility; or

(13) Violation of any pretreatment standard or requirement, or any terms of the wastewater discharge permit or this article.

Wastewater discharge permits shall be voidable upon cessation of operations or transfer of business ownership. All wastewater discharge permits issued to a particular user are void upon the issuance of a new wastewater discharge permit to that user.
(Ord. No. 93.40, 11-18-93; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Sec. 27-47. Wastewater discharge permit reissuance.

A user with an expiring wastewater discharge permit shall apply for reissuance of the wastewater discharge permit as follows:

(1) If no significant changes have been made to processes or responsible personnel since the last inspection conducted by the city, submit a letter, at least thirty (30) days before the permit expires, requesting that the discharge permit be reissued; or

(2) If significant changes to the processes or responsible personnel have occurred since the last inspection conducted by the city, submit a complete permit application, in accordance with Section 27-35 of this article, a minimum of thirty (30) days prior to the expiration of the user's existing wastewater discharge permit.

(Ord. No. 93.40, 11-18-93; Ord. No. 2007.83, 1-10-08)

Secs. 27-48—27-50. Reserved.

DIVISION 6. REPORTING REQUIREMENTS

Sec. 27-51. Baseline monitoring reports.

(a) Within either one hundred eighty (180) days after the effective date of a categorical pretreatment standard, or the final administrative decision on a category determination under 40 CFR 403.6(a)(4), whichever is later, existing categorical users currently discharging to or scheduled to discharge to the POTW shall submit to the public works director a report which contains the information listed in paragraph (b) below. At least ninety (90) days prior to commencement of their discharge, new sources, and sources that become categorical users subsequent to the promulgation of an applicable categorical standard, shall submit to the public works director a report which contains the information listed in paragraph (b) below. A new source shall report the method of pretreatment it intends to use to meet applicable categorical standards. A new source shall also give estimates of its anticipated flow and quantity of pollutants to be discharged. The public works director may designate in permits issued to other users that they must file the reports required by this section.

(b) Users described above or designated by the public works director shall submit the information set forth below.

(1) *Identifying Information.* The name and address of the facility, including the name of the operator, owner, and SIC number.

(2) *Environmental Permits.* A list of any environmental control permits held by or for the facility.

(3) *Description of Operations.* A brief description of the nature, average rate of production, and standard industrial classifications of the operation(s) carried out by such user. This description will include a schematic process diagram in relation to a site plan which indicates points of discharge to the POTW from the regulated processes.

(4) *Flow Measurement.* Information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from regulated process streams and other streams, as necessary, to allow use of the combined wastestream formula set out in 40 CFR 403.6(e).

(5) *Measurement of Pollutants.*

a. The categorical pretreatment standards applicable to each regulated process.

b. The results of sampling and analysis identifying the nature and concentration, and/or mass, where required by the standard or by the public works director, of regulated pollutants in the discharge from each regulated process. Instantaneous, daily maximum, and long-term average concentrations, or mass, where required, shall be reported. The sample shall be representative of daily operations and shall be analyzed in accordance with procedures set out in Section 27-60 and 27-61 of this article.

c. Sampling must be performed in accordance with procedures set out in Section 27-60 and 27-61 of this article.

(6) *Certification.* A statement, reviewed by the user's authorized representative and certified by a qualified professional, indicating whether pretreatment standards are being met on a consistent basis, and, if not, whether additional operation and maintenance (O&M) and/or additional pretreatment is required to meet the pretreatment standards and requirements.

(7) *Compliance Schedule.* If additional pretreatment and/or O&M will be required to meet the pretreatment standards, the shortest schedule by which the user will provide such additional pretreatment and/or O&M. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard. A compliance schedule pursuant to this section must meet the requirements set out in Section 27-52 of this article.

(8) *Signature and Certification.* All baseline monitoring reports must be signed and certified in accordance with Section 27-36 of this article.

(Ord. No. 93.40, 11-18-93; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Sec. 27-52. Compliance schedule progress reports.

The following conditions shall apply to the compliance schedule required by Section 27-51(b)(7) of this article:

(1) The schedule shall contain progress increments in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the user to meet the applicable pretreatment standards (such events include, but are not limited to, hiring an engineer, completing preliminary and final plans, executing contracts for major components, commencing and completing construction, and beginning and conducting routine operation);

(2) No increment referred to above shall exceed nine (9) months;

(3) The user shall submit a progress report to the public works director no later than fourteen (14) days following each date in the schedule and the final date of compliance including, as a minimum, whether or not it complied with the increment of progress, the reason for any delay, and, if appropriate, the steps being taken by the user to return to the established schedule; and

(4) In no event shall more than nine (9) months elapse between such progress reports to the public works director.

(Ord. No. 93-40, 11-18-93; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Sec. 27-53. Reports on compliance with categorical pretreatment standard deadline.

Within ninety (90) days following the date for final compliance with applicable categorical pretreatment standards, or in the case of a new source following commencement of the introduction of wastewater into the POTW, any user subject to such pretreatment standards and requirements shall submit to the public works director a report containing the information described in Section 27-51(b)(4-6) of this article. For users subject to equivalent mass or concentration limits established in accordance with the procedures in 40 CFR 403.6(c), this report shall contain a reasonable measure of the user's long-term production rate. For all other users subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the user's actual production during the appropriate sampling period. All compliance reports must be signed and certified in accordance with Section 27-36 of this article.
(Ord. No. 93.40, 11-18-93; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Sec. 27-54. Periodic compliance reports.

(a) All SIUs and other users as may be designated by the public works director in the user's permit shall, at a frequency determined by the public works director but in no case less than twice per year (in June and December), submit a report indicating the nature and concentration of pollutants in the discharge which are limited by pretreatment standards, such other information as required by the public works director and the measured or estimated average and maximum daily flows for the reporting period. All periodic compliance reports must be signed and certified in accordance with Section 27-36 of this article.

(b) All wastewater samples must be representative of the user's discharge and obtained and analyzed in compliance with Section 27-60 and 27-61. Wastewater monitoring and flow measurement facilities shall be properly operated, kept clean, and maintained in good working order at all times. The failure of a user to keep its monitoring facility in good working order shall not be grounds for the user to claim that sample results are unrepresentative of its discharge.

(c) If a user subject to the reporting requirement in this section monitors any pollutant more frequently than required by the public works director, using the procedures prescribed in Section 27-60 and 27-61 of this article, the results of this monitoring shall be included in the report.
(Ord. No. 93.40, 11-18-93; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Sec. 27-55. Reports of changed conditions.

Each user must notify the public works director of any planned significant changes to the user's operations or system which might alter the nature, quality, or volume of its wastewater at least forty-five (45) days before the change.

(1) The public works director may require the user to submit such information as may be deemed necessary to evaluate the changed condition, including the submission of a wastewater discharge permit application under Section 27-35 of this article.

(2) The public works director may issue a wastewater discharge permit under Section 27-37 of this article or modify an existing wastewater discharge permit under Section 27-44 of this article in response to changed conditions or anticipated changed conditions.

(3) For purposes of this requirement, significant changes include, but are not limited to, flow increases of twenty percent (20%) or greater, and the discharge of any previously unreported pollutants.

(Ord. No. 93.40, 11-18-93; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Sec. 27-56. Reports of potential problems.

(a) In the case of any discharge, including, but not limited to, accidental discharges, discharges of a nonroutine, episodic nature, a noncustomary batch discharge, or a slug load, that may cause potential problems for the POTW, the user shall immediately telephone and notify the public works director of the incident. This notification shall include the location of the discharge, type of waste, concentration and volume, if known, and corrective actions taken by the user.

(b) Within five (5) days following such discharge, the user shall, unless waived by the public works director, submit a detailed written report describing the cause(s) of the discharge and the measures to be taken by the user to prevent similar future occurrences. Such notification shall not relieve the user of any expense, loss, damage, or other liability which may be incurred as a result of damage to the POTW, natural resources, or any other damage to person or property; nor shall such notification relieve the user of any fines, penalties, or other liability which may be imposed pursuant to this article.

(c) A notice shall be permanently posted on the user's bulletin board or other prominent place advising employees whom to call in the event of a discharge described in subsection (a), above. Employers shall ensure that all employees, who may cause such a discharge to occur, are advised of the emergency notification procedure.

(Ord. No. 93.40, 11-18-93; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Sec. 27-57. Reports from unpermitted users.

All users not required to obtain a wastewater discharge permit shall provide appropriate reports and surveys to the public works director as the public works director may require.

(Ord. No. 93.40, 11-18-93; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Sec. 27-58. Notice of violation/repeat sampling and reporting.

If sampling performed by a user indicates a violation, the user must notify the public works director within twenty-four (24) hours of becoming aware of the violation. The user shall also repeat the sampling and analysis and submit the results of the repeat analysis to the public works director within thirty (30) days after becoming aware of the violation. The user may not be required to resample if the public works director monitors at the user's facility at least once a month, or if the public works director samples between the user's initial sampling and when the user receives the results of this sampling.

(Ord. No. 93.40, 11-18-93; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Sec. 27-59. Notification of the discharge of hazardous waste.

(a) Any user who commences the discharge of hazardous waste shall notify the POTW, the EPA Regional Waste Management Division Director, and state hazardous waste authorities, in writing, of any discharge into the POTW of a substance which, if otherwise disposed of, would be a hazardous waste under 40 CFR Part 261. Such notification must include the name of the hazardous waste as set forth in 40 CFR Part 261, the EPA hazardous waste number, and the type of discharge (continuous, batch, or other). If the user discharges more than one hundred (100) kilograms of such waste per calendar month to the POTW, the notification also shall contain the following information to the extent such information is known and readily available to the user: an identification of the hazardous constituents contained in the wastes, an estimation of the mass and concentration of such constituents in the wastestream discharged during that calendar month, and an estimation of the mass of constituents in the wastestream expected to be discharged during the following twelve (12) months. All notifications must take place no later than one hundred and eighty (180) days after the discharge commences. Any notification under this paragraph need be submitted only once for each hazardous waste discharged. However, notifications of changed conditions must be submitted under Section 27-55 of this article. The notification requirement in this section does not apply to pollutants already reported by users subject to categorical pretreatment standards under the self-monitoring requirements of Sections 27-51, 27-53 and 27-54 of this article.

(b) Dischargers are exempt from the requirements of paragraph A, above, during a calendar month in which they discharge no more than fifteen (15) kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e). Discharge of more than fifteen (15) kilograms of nonacute hazardous wastes in a calendar month, or of any quantity of acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e), requires a one-time notification. Subsequent months during which the user discharges additional amounts of such quantities of any hazardous waste do not require additional notification.

(c) In the case of any new regulations under Section 3001 of RCRA identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the user must notify the public works director, the EPA Regional Waste Management Waste Division Director, and state hazardous waste authorities of the discharge of such substance within ninety (90) days of the effective date of such regulations.

(d) In the case of any notification made under this section, the user shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.

(e) This provision does not create a right to discharge any substance not otherwise permitted to be discharged by this article, a permit issued thereunder, or any applicable federal or state law.

(Ord. No. 93.40, 11-18-93; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Sec. 27-60. Sampling and analysis requirements.

(a) All samples collected for purposes of analysis to determine compliance with this article must be obtained using sampling techniques/procedures as published by the EPA in 40 CFR Part 136.

(b) The analysis of all samples in order to be considered for compliance with the requirements of this article must be conducted pursuant to the techniques and procedures published by the EPA in 40 CFR Part 136 by a laboratory licensed by the state of Arizona as an environmental laboratory (A.R.S. § 36-495, et seq.) or such other approval authority deemed acceptable by the public works director.
(Ord. No. 93.40, 11-18-93; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Sec. 27-61. Sample collection.

(a) Except as indicated in subsection (b), below, the user must collect wastewater samples using flow proportional composite collection techniques. In the event flow proportional sampling is infeasible, the public works director may authorize the use of time proportional sampling or a minimum of four (4) grab samples where the user demonstrates that this will provide a representative sample of the effluent being discharged.

(b) Samples for oil and grease, temperature, pH, cyanide, sulfides, and those pollutants and limits set forth in Section 27-10(b)(19) must be obtained using grab collection techniques unless otherwise specified in the wastewater discharge permit.
(Ord. No. 93.40, 11-18-93; Ord. No. 2001.17, 7-26-01; Ord. No. 2007.83, 1-10-08; Ord. No. 2010.02, 2-4-10)

Sec. 27-62. Timing.

Written reports will be deemed to have been submitted on the date postmarked. For reports which are not mailed, postage prepaid, into a mail facility serviced by the United States Postal Service, the date of receipt of the report shall govern.
(Ord. No. 93.40, 11-18-93)

Sec. 27-63. Record keeping.

Users subject to the reporting requirements of this article or by designation of the public works director shall retain, and make available for inspection and copying, all records of information obtained pursuant to any monitoring activities required by this article or user's permit and any additional records of information obtained pursuant to monitoring activities undertaken by the user independent of such requirements. Records shall include the date, exact place, method, and time of sampling, and the name of the person(s) taking the samples; the dates analyses were performed; who performed the analyses; the analytical techniques or methods used; and the results of such analyses. These records shall remain available for a period of at least three (3) years. This period shall be automatically extended for the duration of any litigation concerning the user or the city, or where the user has been specifically notified of a longer retention period by the public works director.
(Ord. No. 93.40, 11-18-93; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Sec. 27-64. Reserved.

Sec. 27-65. Repealed.
(Ord. No. 90.13, 4-12-90; Ord. No. 2012.41, 9-6-12)

Sec. 27-66. Repealed.
(Ord. No. 90.13, 4-12-90; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10; Ord. No. 2012.41, 9-6-12)

Secs. 27-67—27-70. Reserved.

DIVISION 7. COMPLIANCE MONITORING

Sec. 27-71. Right of entry: inspection and sampling.

The public works director shall have the right to enter the premises of any user to determine whether the user is complying with all requirements of this article and any wastewater discharge permit or order issued hereunder. Users shall allow the public works director ready access to all parts of the premises for the purposes of inspection, sampling, records examination and copying, and the performance of any additional duties.

(1) Where a user has security measures in force which require proper identification and clearance before entry into its premises, the user shall make necessary arrangements with its security guards so that, upon presentation of suitable identification, the public works director will be permitted to enter without delay for the purposes of exercising all inspection and review authorities under this article.

(2) The public works director shall have the right to set up on the user's property, or require installation of, such devices as are necessary to conduct sampling and/or metering of the user's operations.

(3) The public works director may require the user to install monitoring and/or measuring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the user at its own expense. All devices used to measure wastewater flow and quality shall be calibrated annually to ensure their accuracy.

(4) Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the user at the written or verbal request of the public works director and shall not be replaced. The costs of clearing such access shall be born by the user.

(5) Unreasonable delays in allowing the public works director access to the user's premises shall be a violation of this article.

(Ord. No. 93.40, 11-18-93; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Sec. 27-72. Search warrants.

If the public works director has been refused access to a building, structure, or property, or any part thereof, and is able to demonstrate probable cause to believe that there may be a violation of this article, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program of the city designed to verify compliance with this article or any permit or order issued hereunder, or to protect the overall public health, safety and welfare of the community, then the public works director may seek issuance of a search warrant from the Municipal Court of the city. The public works director may, in addition, obtain an "inspection warrant" pursuant to Chapter 34 of the Tempe City Code.

(Ord. No. 93.40, 11-18-93; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Secs. 27-73—27-80. Reserved.

DIVISION 8. CONFIDENTIAL INFORMATION

Sec. 27-81. Confidential information.

Information and data on a user obtained from reports, surveys, wastewater discharge permit applications, wastewater discharge permits, and monitoring programs, and from the public works director's inspection and sampling activities, shall be available to the public without restriction, unless the user specifically requests, and is able to demonstrate to the satisfaction of the public works director, that the release of such information would divulge information, processes, or methods of production entitled to protection as trade secrets under applicable state law. Any such request must be asserted at the time of submission of the information or data. When requested and demonstrated by the user furnishing a report that such information should be held confidential, the portions of a report which might disclose trade secrets or secret processes shall not be made available for inspection by the public, but shall be made available immediately upon request to governmental agencies for uses related to the NPDES program or pretreatment program, and in enforcement proceedings involving the person furnishing the report. Wastewater constituents and characteristics and other “effluent data” as defined by 40 CFR 2.302 will not be recognized as confidential information and will be available to the public without restriction.
(Ord. No. 93.40, 11-18-93; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

DIVISION 9. PUBLICATION OF USERS IN SIGNIFICANT NONCOMPLIANCE

Sec. 27-82. Publication of users.

The public works director shall publish at least annually, in a newspaper of general circulation to provide public notice within the area served by the POTW, a list of industrial users which, at any time during the previous twelve (12) months, were in significant noncompliance with applicable pretreatment standards and requirements. Significant noncompliance is determined at the beginning of each quarter based on data of the previous six (6) months. The term significant noncompliance shall mean:

(1) Chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent (66%) or more of all wastewater measurements taken for the same pollutant parameter during a six (6) month period exceed a numeric pretreatment standard or requirement, including instantaneous limits as defined by 40 CFR 403.3(1);

(2) Technical Review Criteria (TRC) violations, defined here as those in which thirty-three percent (33%) or more of all the measurements taken for the same pollutant parameter during a six (6) month period equals or exceeds the product of the numeric pretreatment standard or requirement, including instantaneous limits as defined by 40 CFR 403.3(1) multiplied by the applicable TRC (TRC = 1.4 for BOD, TSS, fats, oils and grease, and 1.2 for all other pollutants except pH);

(3) Any other violation of a pretreatment standard or requirement as defined by 40 CFR 403.3(1) (daily maximum, long term average, instantaneous limit, or narrative standard) that the public works director determines has caused, alone or in combination with other discharges, interference or pass through, including endangering the health of POTW personnel or the general public;

(4) Any discharge of pollutants that has caused imminent endangerment to human health, welfare of the public or to the environment, or has resulted in the public works director's exercise of its emergency authority to halt or prevent such a discharge;

(5) Failure to meet, within ninety (90) days after the scheduled date, a compliance schedule milestone contained in a wastewater discharge permit or enforcement order for starting construction, completing construction, or attaining final compliance;

(6) Failure to provide within thirty (30) days after the due date, any required reports, including but not limited to baseline monitoring reports, ninety (90) day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules;

(7) Failure to accurately report noncompliance; or

(8) Any other violation, which may include a violation of best management practices, that the public works director determines will adversely affect the operation or implementation of the local pretreatment program.

(Ord. No. 93.40, 11-18-93; Ord. No. 2001.17, 7-26-01; Ord. No. 2007.83, 1-10-08; Ord. No. 2010.02, 2-4-10)

Secs. 27-83—27-85. Reserved.

DIVISION 10. ADMINISTRATIVE ENFORCEMENT AUTHORITIES

Sec. 27-86. Notification of violation.

When the public works director finds that a person has violated, or continues to violate, any provision of this article, a wastewater discharge permit or order issued hereunder, or any other applicable federal, state or local pretreatment standard or requirement, the public works director may serve upon that person a written Notice of Violation. The public works director in the notice will require the person within ten (10) working days of the receipt of this notice, to provide in writing to the public works director an explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific actions to be taken by the person in violation to prevent subsequent violations. Submission of this plan in no way relieves the person of liability for any violations in the notice or that occurred before or after receipt of the Notice of Violation nor limits the public works director's authority to take further enforcement actions. Nothing in this section shall limit the authority of the public works director to take any action, including emergency actions or any other enforcement action, without first issuing a Notice of Violation. In appropriate situations the public works director may notify the person orally either in person or by telephone prior to, and in some cases in lieu of, written notification.
(Ord. No. 93.40, 11-18-93; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Sec. 27-87. Consent orders.

The public works director may enter into consent orders, assurances of voluntary compliance, negotiated settlement agreements or other similar documents establishing an agreement with any person responsible for noncompliance. Such documents will include specific action to be taken by the person to correct the noncompliance within a time period specified by the document. Such documents shall have the same force and effect as the administrative orders issued pursuant to Sections 27-89 and 27-90 of this article and shall be judicially enforceable.
(Ord. No. 93.40, 11-18-93; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Sec. 27-88. Show cause hearing.

The public works director may order a person which has violated, or continues to violate, any provision of this article, a wastewater discharge permit or order issued hereunder, or any other applicable federal, state or local pretreatment standard or requirement, to appear before the public works director and show cause why the proposed enforcement action should not be taken. Notice shall be served on the person specifying the time and place for the meeting, the proposed enforcement action, the reasons for such action, and a request that the person show cause why the proposed enforcement action should not be taken. The notice of the meeting shall be served personally or by registered or certified mail (return receipt requested) at least ten (10) days prior to the hearing. Such notice may be served on any authorized representative of the person. A show cause hearing shall not be a bar against, or prerequisite for, taking any other action against the person.
(Ord. No. 93.40, 11-18-93; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Sec. 27-89. Compliance orders.

When the public works director finds that a person has violated, or continues to violate, any provision of this article, a wastewater discharge permit or order issued hereunder, or any other applicable federal, state or local pretreatment standard or requirement, the public works director may issue an order to the person responsible for the discharge directing that the person come into compliance within a specified time. If the person does not come into compliance within the time provided, sewer and/or water service may be discontinued unless adequate treatment facilities, devices, or other related appurtenances are installed and properly operated. Compliance orders also may contain other requirements to address the noncompliance, including additional self-monitoring and management practices designed to minimize the amount of pollutants discharged to the sewer. A compliance order may not extend the deadline for compliance established for a pretreatment standard or requirement, nor does a compliance order relieve the person of liability for any violation, including any continuing violation. Issuance of a compliance order shall not be a bar against, or a prerequisite for, taking any other action against the person.
(Ord. No. 93.40, 11-18-93; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Sec. 27-90. Cease and desist orders.

When the public works director finds that a person has violated, or continues to violate, any provision of this article, a wastewater discharge permit or order issued hereunder, or any other applicable federal, state or local pretreatment standard or requirement, or that the person's past violations are likely to recur, the public works director may issue an order to the person directing them to cease and desist all such violations and direct the person to:

(1) Immediately comply with all requirements; and

(2) Take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation, including halting operations and/or terminating the discharge.

Issuance of a cease and desist order shall not be a bar against, or a prerequisite for, taking any other action against the person. A person's failure to comply with an order of the public works director issued pursuant to this division shall constitute a violation of this article.
(Ord. No. 93.40, 11-18-93; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Sec. 27-91. Administrative fines.

(a) When the public works director finds that a person has violated, or continues to violate, any provision of this article, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, the public works director may fine such person in an amount determined pursuant to the city enforcement response plan and penalty policy adopted pursuant to Section 27-95. For continuing violations, each day may constitute a violation. Such fines shall be assessed on a per violation, per day basis. In the case of monthly or other long term average discharge limits, fines shall be assessed for each day during the period of violation. The public works director may add the costs of preparing administrative enforcement actions, such as notices and orders, to the fine.

(b) Unpaid charges, fines, and penalties shall, after thirty (30) calendar days, be assessed an additional penalty of ten percent (10%) of the unpaid balance, and interest shall accrue thereafter at a rate of one percent (1%) per month or part thereof until paid in full. A lien against the person's property may be sought for unpaid charges, fines, and penalties.

(c) Persons desiring to dispute such fines must file a written request for the public works director to reconsider the fine along with full payment of the fine amount within fifteen (15) days of being notified of the fine. Where a request has merit, the public works director may convene a hearing on the matter. In the event the person's appeal is successful, the payment, together with any interest accruing thereto, shall be returned to the person.

(d) Issuance of an administrative fine shall not be a bar against, or a prerequisite for, taking any other action against the person.
(Ord. No. 93.40, 11-18-93; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Sec. 27-92. Emergency suspensions.

The public works director may immediately suspend a person's discharge, after informal notice to the person, whenever such suspension is necessary to stop an actual or threatened discharge which reasonably appears to present or cause an imminent or substantial endangerment to the health or welfare of persons or imminent threat of substantial damage to the POTW. The public works director may also immediately suspend a person's discharge, after notice and opportunity to respond, that threatens to interfere with the operation of the POTW, or which presents, or may present, an endangerment to the environment.

(1) Any person notified of a suspension of its discharge shall immediately stop or eliminate its contribution. In the event of a person's failure to immediately comply voluntarily with the suspension order, the public works director may take such steps as deemed necessary, including immediate severance of the sewer connection, to prevent or minimize damage to the POTW, its receiving stream, or endangerment to any individuals. The public works director may allow the person to recommence its discharge when the person has demonstrated to the satisfaction of the public works director that the period of endangerment has passed, unless the termination proceedings in Section 27-93 of this article are initiated against the person.

(2) A person that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a detailed written statement within ten (10) working days, describing the causes of the harmful contribution and the measures taken to prevent any future occurrence, to the public works director prior to the date of any show cause or termination hearing under Sections 27-88 or 27-93 of this article.

Nothing in this section shall be interpreted as requiring a hearing prior to any emergency suspension under this section. For the purposes of this section, informal notice may mean either oral or written notice and does not mean actual notice.
(Ord. No. 93.40, 11-18-93; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Sec. 27-93. Termination of discharge.

(a) In addition to the provisions in Sections 27-46 and 27-113 of this article, as deemed appropriate by the public works director, any person who violates any of the following conditions is subject to discharge termination:

(1) Violation of wastewater discharge permit conditions;

(2) Failure to accurately report the wastewater constituents and characteristics of its discharge;

(3) Failure to report significant changes in operations or wastewater volume, constituents, and characteristics prior to discharge;

(4) Refusal of reasonable access to the person's premises for the purpose of inspection, monitoring, or sampling;

(5) Violation of the pretreatment standards in Division 2 of this article;

(6) Failure to timely pay any sewer user fees or charges, fines or penalties under this chapter; or

(7) Failure to properly maintain pretreatment equipment.

(b) A person that violates any of the conditions in this section will be notified of the proposed termination of its discharge and will be offered an opportunity to show cause under Section 27-88 of this article why the proposed action should not be taken. Exercise of this option by the public works director shall not be a bar to, or a prerequisite for, taking any other action against the person.
(Ord. No. 93.40, 11-18-93; Ord. No. 2001.17, 7-26-01; Ord. No. 2007.83, 1-10-0; Ord. No. 2010.02, 2-4-108)

Sec. 27-94. Discharge violations defined as nuisance.

All discharges into the POTW in violation of the laws and regulations of the United States, the State of Arizona or the ordinances of the city are hereby defined by the city council to be a nuisance to the POTW, which nuisance shall be abated and fined pursuant to the laws and regulations of the United States, the State of Arizona and the city. A nuisance under this chapter is not subject to the procedures, definitions and provisions of Chapter 21 of the TCC.
(Ord. No. 93.40, 11-18-93)

Sec. 27-95. Enforcement response plan and penalty policy; penalties non-exclusive.

(a) The public works director is authorized to develop and submit to the city council for its approval by resolution:

(1) An enforcement response plan; and

(2) Penalty policy.

(b) The enforcement response plan will at a minimum satisfy the requirements of 40 CFR § 403.8(f)(5). The penalty policy shall establish the factors to be considered and the method of calculating administrative fines to be assessed pursuant to Section 27-91(a) and the factors to be considered in utilizing the judicial enforcement remedies set forth in Division 11 of this article.

(c) The enforcement response plan and penalty policy developed by the public works director pursuant to this section may be combined with the plans and policies developed pursuant to §§ 12-153 and 33-111, as determined appropriate by the public works director, to ensure consistent enforcement response plans and penalty policies.

(d) The remedies provided for in this article are not exclusive. Each day's noncompliance constitutes a new violation. The city may take any, all or any combination of these actions against a noncompliant person.
(Ord. No. 93.40, 11-18-93; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10; Ord. No. 2012.41, 9-6-12)

Secs. 27-96—27-100. Reserved.

DIVISION 11. JUDICIAL ENFORCEMENT REMEDIES

Sec. 27-101. Injunctive relief.

When the public works director finds that a person has violated, or continues to violate, any provision of this article, a wastewater discharge permit, or order issued hereunder, or any other applicable federal, state, or local pretreatment standard or requirement, the public works director may petition the Superior Court of Arizona, Maricopa County, through the city attorney for the issuance of a temporary or permanent injunction, as appropriate, which restrains or compels the specific performance of the wastewater discharge permit, order, or other requirement imposed by this article on activities of the person. The public works director may also seek such other action as is appropriate for legal and/or equitable relief, including a requirement for the person to conduct environmental remediation. A petition for injunctive relief shall not be a bar against, or a prerequisite for, taking any other action against a person.
(Ord. No. 93.40, 11-18-93; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Sec. 27-102. Civil penalties.

(a) A person who has violated, or continues to violate, any provision of this article, a wastewater discharge permit, or order issued hereunder, or any other applicable federal, state or local pretreatment standard or requirement shall be liable to the city for a maximum civil penalty of $25,000 per violation, per day in accordance with A.R.S. § 49-391. In the case of a monthly or other long-term average discharge limit, penalties shall accrue for each day during the period of the violation. A.R.S. § 49-391 permits recovery of civil penalties provided therein by action in superior court or negotiated settlement agreement. No consent decree in superior court or negotiated settlement may become final until the city has provided a period of thirty (30) days for public comment.

(b) The public works director may recover reasonable attorneys' fees, court costs, and other expenses associated with enforcement activities, including sampling and monitoring expenses, and the cost of any actual damages incurred by the city.

(c) In determining the amount of civil penalty, the city or court shall consider: (1) the seriousness of the violation, (2) the economic benefit, if any, resulting from the violation, (3) any history of such violation, (4) any good faith efforts to comply with the applicable requirements, (5) the economic impact of the penalty on the violator, and (6) such other factors as justice may require including but not limited to the extent of harm caused by the violation, the magnitude and duration of the violation, and corrective actions taken by the violator.

(d) Filing a suit for civil penalties shall not be a bar against, or a prerequisite for, taking any other action against a person.
(Ord. No. 93.40, 11-18-93; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Sec. 27-103. Criminal prosecution.

(a) A person who willfully or negligently violates any provision of this article, a wastewater discharge permit, or order issued hereunder, or any other applicable federal, state or local pretreatment standard or requirement shall, upon conviction, be guilty of a class one (1) misdemeanor, punishable by a fine of not more than $2,500 per violation, per day, or imprisonment for not more than six (6) months, or both.

(b) A person who willfully or negligently introduces any substance into the POTW which causes personal injury or property damage shall, upon conviction for violation of this article, be guilty of a class one misdemeanor and be subject to a penalty of at least $2,500, or be subject to imprisonment for not more than six (6) months, or both. This penalty shall be in addition to any other cause of action for personal injury or property damage available under state or federal law.

(c) A person who knowingly makes any false statements, representations, or certifications in any application, record, report, plan, or other documentation filed, or required to be maintained, pursuant to this article, wastewater discharge permit, or order issued hereunder, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required under this article shall, upon conviction, be punished by a fine of not more than $2,500 per violation, per day, or imprisonment for not more than six (6) months, or both.
(Ord. No. 93.40, 11-18-93)

Sec. 27-104. Remedies nonexclusive.

The remedies provided for in this article are not exclusive. The public works director may take any, all, or any combination of these actions against a noncompliant person. Enforcement of pretreatment violations will generally be in accordance with the city's enforcement response plan. However, the public works director may take other action against any person when the circumstances warrant. Further, the public works director is empowered to take more than one enforcement action against any noncompliant person.
(Ord. No. 93.40, 11-18-93; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Secs. 27-105—27-110. Reserved.

DIVISION 12. SUPPLEMENTAL ENFORCEMENT ACTION

Sec. 27-111. Performance bonds.

The public works director may decline to issue or reissue a wastewater discharge permit to any user or authorized representative who has failed to comply with any provision of this article, a previous wastewater discharge permit, or order issued hereunder, or any other applicable federal, state or local pretreatment standard or requirement, unless such user first files a satisfactory bond, letter of credit, cash, or other security device, payable to the city, in a sum not to exceed a value determined by the public works director to be necessary to achieve consistent compliance.
(Ord. No. 93.40, 11-18-93; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Sec. 27-112. Liability insurance.

The public works director may decline to issue or reissue a wastewater discharge permit to any user who has failed to comply with any provision of this article, a previous wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, unless the user first submits proof that it has obtained financial assurances sufficient to restore or repair damage to the POTW caused by its discharge.
(Ord. No. 93.40, 11-18-93; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Sec. 27-113. Water supply/sewer service severance.

Whenever a user has violated or continues to violate any provision of this article, a wastewater discharge permit, or order issued hereunder, or any other applicable federal, state or local pretreatment standard or requirement, water and/or sewer service to the user may be severed. Service will only recommence, at the user's expense, after it has satisfactorily demonstrated its ability to comply.
(Ord. No. 93.40, 11-18-93)

Secs. 27-114—27-120. Reserved.

DIVISION 13. AFFIRMATIVE DEFENSES TO DISCHARGE VIOLATIONS

Sec. 27-121. Upset.

(a) For the purposes of this section, "upset" means an exceptional incident in which there is unintentional and temporary noncompliance with categorical pretreatment standards because of factors beyond the reasonable control of the user. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(b) An upset shall constitute an affirmative defense to an action brought for noncompliance with categorical pretreatment standards if the requirements of subsection(c), below, are met.

(c) A user who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

(1) An upset occurred and the user can identify the cause(s) of the upset;

(2) The facility was at the time being operated in a prudent and workman-like manner and in compliance with applicable operation and maintenance procedures; and

(3) The user has submitted the following information to the public works director within twenty-four (24) hours of becoming aware of the upset if this information is provided orally, a written submission must be provided within five (5) days:

a. A description of the indirect discharge and cause of noncompliance;

b. The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue; and

c. Steps being taken and/or planned to reduce, eliminate, and prevent recurrence of the noncompliance.

(d) In any enforcement proceeding, the user seeking to establish the occurrence of an upset shall have the burden of proof.

(e) Users will have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with categorical pretreatment standards.

(f) Users shall control production of all discharges to the extent necessary to maintain compliance with categorical pretreatment standards upon reduction, loss, or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost, or fails.
(Ord. No. 93.40, 11-18-93; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Sec. 27-122. Prohibited discharge standards.

A user shall have an affirmative defense to an enforcement action brought against it for noncompliance with the general prohibitions in Section 27-10(a) of this article or the specific prohibitions in Sections 27-10(b)(3) through 27-10(b)(14) but excluding 27-10 (b)(8) of this article if it can prove that it did not know, or have reason to know, that its discharge, alone or in conjunction with discharges from other sources, would cause pass through or interference and that either:

(1) A local limit exists for each pollutant discharged and the user was in compliance with each limit directly prior to, and during, the pass through or interference; or

(2) No local limit exists, but the discharge did not change substantially in nature or constituents from the user's prior discharge when the city was regularly in compliance with its NPDES permit, and in the case of interference, was in compliance with applicable sludge use or disposal requirements.

(Ord. No. 93.40, 11-18-93)

Sec. 27-123. Bypass.

(a) For the purposes of this section,

(1) “Bypass” means the intentional diversion of wastestreams from any portion of a user's treatment facility.

(2) “Severe property damage” means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

(b) A user may allow any bypass to occur which does not cause pretreatment standards or requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provision of subsections (c) and (d) of this section.

(c) (1) If a user knows in advance of the need for a bypass, it shall submit prior notice to the public works director, at least ten (10) days before the date of the bypass, if possible.

(2) A user shall submit oral notice to the public works director of an unanticipated bypass that exceeds applicable pretreatment standards within twenty-four (24) hours from the time it becomes aware of the bypass. A written submission shall also be provided within five (5) days of the time the user becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass. The public works director may waive the written report on a case-by-case basis if the oral report has been received within twenty-four (24) hours.

(d) (1) Bypass is prohibited, and the public works director may take an enforcement action against a user for a bypass, unless

a. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

b. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

c. The user submitted notices as required under subsection (c) of this section.

(2) The public works director may approve an anticipated bypass, after considering its adverse effects, if the public works director determines that it will meet the three (3) conditions listed in paragraph (d)(1) of this section.

(Ord. No. 93.40, 11-18-93; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Secs. 27-124—27-125. Reserved.

DIVISION 14. RESERVED

Secs. 27-126—27-140. Reserved.

DIVISION 15. MISCELLANEOUS PROVISIONS

Sec. 27-141. Pretreatment charges and fees.

The city may adopt by resolution reasonable fees for reimbursement of costs of setting up and operating the city's pretreatment program which may include:

(1) Fees for wastewater discharge permit applications including the cost of processing such applications;

(2) Fees for monitoring, inspection, and surveillance procedures including the cost of collection and analyzing a user's discharge, and reviewing monitoring reports submitted by users;

(3) Fees for reviewing and responding to accidental discharge procedures and construction;

(4) Fees for filing appeals; and

(5) Other fees as the city may deem necessary to carry out the requirements contained herein. These fees relate solely to the matters covered by this article and are separate from all other fees, fines, and penalties chargeable by the city.

(Ord. No. 93.40, 11-18-93)

Sec. 27-142. Public works director to enforce all state and federal laws, rules and regulations.

The public works director is hereby authorized to enforce all applicable laws, rules, and regulations of the State of Arizona and the United States concerning direct or indirect discharges to the POTW including but not limited to those set forth in 40 Code of Federal Regulations Part 403 and as it may from time to time be amended.

(Ord. No. 93.40, 11-18-93; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Sec. 27-143. Reserved.

DIVISION 16. EFFECTIVE DATE AND SAVINGS PROVISION

Sec. 27-144. Effective date.

The provisions contained in Sections 27-61 through 27-100 of Chapter 27 of the City Code (1967) (Articles IV and V of Chapter 27, repealed by Ord. 93.40 as new Sections 27-1 through 27-144) will continue in full force and effect until January 1, 1994, but as of January 1, 1994, those articles [prior Sections 27-61 through 27-100] shall be considered repealed; however, all violations of the repealed provisions which occurred prior to their repeal may be fully prosecuted and enforced. All permits issued under the repealed sections of Chapter 27 shall remain valid for their stated term unless sooner terminated or amended pursuant to new Sections 27-1 through 27-144 as adopted by Ord. 93.40. Specifically, the discharge prohibitions and limitations contained in Division 2 [new Sections 27-10 through 27-20] will be deemed to apply to all existing permits and users as of its effective date. This article shall be effective as of the 1st day of January, 1994. (Ord. No. 93.40, 11-18-93)

ARTICLE II. SEWERS - GENERAL[2]

DIVISION 1. IN GENERAL

Sec. 27-151. Definitions.

For the purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section, unless the context clearly indicates a different meaning:

Building connection or *house connection* means the connection to the public sewer and the extension from the sewer.

Garbage means solid wastes from the preparation, cooking, dispensing of food and from the handling, storage and sale of produce.

Industrial wastes means the liquid, gaseous or solid wastes produced as a result of any industrial or commercial operation.

Properly shredded garbage means garbage that has been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than one-fourth of an inch in any dimension. Devices used to shred garbage shall not be installed in commercial or industrial sources.

Sanitary sewer system means all facilities for collecting, pumping, transporting and treating domestic or industrial wastes of any nature, including all such facilities both inside and outside of the city as to which the City has an interest in its ownership, operation, control or capacity.

Standard methods or *standard laboratory procedure* means the procedure outlined in the latest edition of the book, "Standard Methods for the Examination of Water and Sewage," published by the American Public Health Association.
(Code 1967, § 28-1, 27-1; Ord. No. 93.40, 11-18-93; Ord. No. 97.08, 2-13-97; Ord. No. 2007.83, 1-10-08)

[2]**Editor's Note**—Ord. No. 93.40, adopted 11-18-93, moved Articles I, II, III [Sections 27-1 to 27-60] and Article VI [Sections 27-101 to 27-104] into this new Article II entitled "Sewers - General", and redesignated these articles as Divisions 1, 2, 3 and 4 respectively. Sections 27-61 through 27-100 were renumbered as new Sections 27-151 to 27-210 here, and Sections 27-101 to 27-104 were renumbered as new Sections 27-211 to 27-214.

Cross references—Plumbing, § 8-181 et seq.; water and sewer extensions to newly developed areas, § 25-81 et seq.; Solid waste, Ch. 28; Water, Ch. 33.

Sec. 27-152. Applicability.

The provisions of this article shall be applicable to any building, structure or property situated within the city, including that which may be owned, leased, controlled, operated or occupied by the United States, the state, the county, the Tempe School District or by any public or quasi-public agency, corporation or association, except the city.
(Code 1967, § 28-2, 27-2; Ord. No. 93.40, 11-18-93)

Sec. 27-153. Nonliability of city for inadequate service.

The city shall not be held liable for any damage that may result from its inability to provide adequate sewer service, or from a discontinuance thereof for any cause.
(Code 1967, § 28-6, 27-3; Ord. No. 93.40, 11-18-93)

Sec. 27-154. Violations; discontinuance of service; charges.

The violation of this article shall be sufficient cause for the public works department to discontinue sewer service to any premises, and such service shall not be restored until such violations have been discontinued or eliminated. The discontinuance of sewer service shall be accomplished by physically cutting and blocking the building connection. The actual cost for disconnecting and reconnecting the sewer service, plus a service charge in an amount established by council resolution (see Appendix A), shall be paid to the city prior to reconnecting the sewer.
(Code 1967, § 28-7, 27-4; Ord. No. 93.40, 11-18-93; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10; Ord. No. O2014.11, 3-20-14)

Sec. 27-155. Enforcement.

(a) The public works director is hereby charged with the duty of enforcing this division. The public works director shall have the authority to decide any question that may arise which is not fully covered by the provisions contained in this division, and his decision in such cases shall be final subject only to the general discretion of the city manager.

(b) The officers, employees and inspectors of the public works department shall have the right to enter upon the premises of any person at reasonable hours to inspect and to determine whether this article is being violated.

(c) The public works director shall have the authority to approve the design of, issue permits for, and conduct inspections of sewer facilities that are to be connected to the city's sanitary sewer system.

(d) The design and construction of all sanitary sewers under the jurisdiction of the city must conform to the standard sewer design and construction specifications as identified in the Maricopa Association of Governments Specifications, Tempe Standard Details, and the Arizona State Health Services Bulletin No. 11.

(e) The public works director shall incorporate the pertinent requirements of this article into every city contract with any POTW user located outside the municipal jurisdiction of the city. Such contracts shall also provide for liquidated damages and, if applicable, specific performance as remedies for breach of contract.

(f) All sewers to be attached directly or indirectly to a city sanitary sewer shall be inspected by personnel of the city during construction. No physical alteration of the city's facilities shall commence until an inspector is present. No waste water shall be discharged into any sewerage facility tributary to a city facility prior to obtaining inspections and approval of construction by the city.

(Code 1967, §§ 28-8, 28-24, 27-5; Ord. No. 93.40, 11-18-93; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Secs. 27-156—27-170. Reserved.

DIVISION 2. CONNECTIONS

Sec. 27-171. When required.

(a) All persons owning real property adjoining streets and alleys in which there are sewer pipes or mains of the city sanitary sewer system and all persons leasing or using real property, buildings or fixtures thereon which can be served by sewers shall cause to be connected all privies, cesspools and open or unconnected drains with such sewer system. All expense of such connections shall be borne by the owner of such real property or building or the person leasing or using the same. In addition to any other remedy provided for by law, the city shall charge sewer service rental in accordance with the applicable rate schedule for each property, building or structure which has not made connection to available sewer pipes or mains of the city.

(b) All persons owning real property adjoining streets and alleys in which there are thereafter installed sewer pipes or mains of the sanitary sewer system of the city and all persons leasing or using real property, buildings or fixtures thereon which can be served by sewers shall cause to be connected all privies, cesspools and open or unconnected drains with such sewer system prior to the end of one year from the time such sewer system becomes available. All expense of such connection shall be borne by the owner of such real property or the person using or leasing the same. In addition to any other remedy provided for by law, the city shall charge sewer service rental in accordance with the applicable rate schedule for each property, building or structure which has not made connection to sewer pipes or mains of the city prior to the end of one year from the time such sewer system becomes available.

(c) No person shall fail to abate all privies, cesspools and open or unconnected drains within one year from the date sanitary sewer service becomes available. Such abatement shall include filling in such privies, cesspools or septic tank systems, seepage pits and open or unconnected drains with earth, sand, gravel, concrete or other approved material.
(Code 1967, § 28-9, 27-21; Ord. No. 93.40, 11-18-93)

Sec. 27-172. Inspection, approval.

All sewer taps shall be inspected and approved by the city.
(Code 1967, § 28-10, 27-22; Ord. No. 93.40, 11-18-93)

Sec. 27-173. Fees.

(a) Before any sewer tap is made, the sewer participation charge computed in accordance with Sections 25-81 - 25-100 (and all amendments thereto) of this code shall be paid to the city.

(b) Multiple sewer taps will be made by those persons requiring such connections. The city will make individual sewer taps for the fees set by the city council (Appendix A of this code).
(Code 1967, § 28-11, 27-23; Ord. No. 93.40, 11-18-93)

Sec. 27-174. Taps made by user; inspection.

Any person desiring to make his own sewer tap shall notify the public works director at least twenty-four (24) hours prior to making the tap, and shall pay to the city an inspection fee set by the city council (Appendix A of this code). No sewer tap shall be made unless a city inspector is present at the tap site.
(Code 1967, § 28-12, 27-24; Ord. No. 93.40, 11-18-93; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Sec. 27-175. Maintenance.

The sewer service customer shall maintain the building connection or house connection at his sole expense.
(Code 1967, § 28-13, 27-25; Ord. No. 93.40, 11-18-93)

Sec. 27-176. Control manholes.

When required by the public works director, the owner of any property served by a building sewer carrying industrial wastes shall install a suitable control manhole in the building sewer to facilitate observation and sampling of the wastes. Such manholes when required shall be accessible and safely located and shall be constructed in accordance with plans approved by the public works director. The manhole shall be installed by the owner at his expense and shall be maintained by him so as to be safe and accessible at all times.
(Code 1967, § 28-22, 27-26; Ord. No. 93.40, 11-18-93; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Secs. 27-177—27-190. Reserved.

DIVISION 3. CHARGES FOR SANITARY SEWER SYSTEM USE

Sec. 27-191. "Unit of service" defined; determination of units.

For the purposes of this article, "unit of service" shall be each separate occupancy, house, store or building so situated upon any lot within the city that is served by the city sewer system, or in the opinion of the city manager could be served separately from any other occupancy, residence, house, store or building upon the same lot, irrespective of the number of residences, houses, stores or buildings upon such lot, even though two (2) or more of such occupancies, residences, houses, stores or buildings are held or owned by the same person. The determination of the city manager as to whether any house, occupancy, residence, store or building comes within the meaning of this section so as to require a separate sewer connection shall be final; provided, that the owner or occupant of such premises shall have the right to appeal from such decision of the city manager to the city council at its next regular meeting, and in the event of any such appeal being taken the determination of the city council shall be final.
(Code 1967, § 28-14, 27-41; Ord. No. 93.40, 11-18-93)

Sec. 27-192. When due and payable; disconnection upon delinquency.

(a) All persons using the sewerage system of the city shall pay for such service and for the privilege of connecting to the sewer at the rates, at the time and under the conditions set forth in this article and Resolution 1925 of the city, and shall comply with all regulations set forth in this article relating to the use of such sewerage system.

(b) Sewer service rental shall be due and payable at the office of the finance and technology director when the monthly statement is rendered. Payment shall be submitted by the due date printed on the monthly statement and shall be delinquent thereafter. If the total bill for any such charge is not paid by the date of delinquency, service of all domestic water may be discontinued to such user, and additional service charges as specified in Section 33-58 shall be charged and collected plus the total amount of the delinquent bill before service is again resumed.
(Code 1967, §§ 28-4, 28-16, 27-42; Ord. No. 93.40, 11-18-93; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10; Ord. No. O2014.11, 3-20-14)

Sec. 27-193. Repealed.

(Code 1967, § 28-17, 27-43; Ord. No. 93.40, 11-18-93; Ord. No. O2014.11, 3-20-14)

Sec. 27-194. Deposit.

All sewer service users other than property owners shall place a deposit with the city to ensure the payment of sewer service rental equal to one month's sewer service rental for the property occupied or used by him.
(Code 1967, § 28-18, 27-44; Ord. No. 93.40, 11-18-93)

Sec. 27-195. Lien.

(a) Unless otherwise prohibited by state law, delinquent sewer service rental shall constitute a lien against the property where the services were provided. The procedure to perfect such lien shall be as follows:

(1) The finance and technology director shall give written notice to the owner of the property within thirty (30) days after the statement is rendered by either personally serving or mailing to such owner at the owner's last-known address by certified or registered mail, or the address to which the sewer service rental billing was sent. This written notice shall indicate that the city shall impress and secure a lien on the subject property unless the owner brings the delinquent bill current within thirty (30) days from service or receipt of the letter, and, in addition, pays any penalties that may be due pursuant to Section 27-192. The notice shall also contain a statement that the owner may appeal the delinquency to the city council by filing such appeal within the thirty-day time period after receipt of such notice.

(2) If the owner of the property does not bring the delinquency current or successfully prosecute an appeal to the city council within the thirty (30) days from service or receipt of the registered or certified letter, the finance and technology director shall prepare duplicate copies of a notice and claim of lien and file one copy with the county recorder, and within a reasonable time thereafter serve or mail by registered or certified mail the remaining copy to the owner of the property. The notice and claim of lien shall be made under oath by the finance and technology director or his duly authorized representative and shall contain the following:

a. A description of the property sufficient for its identification;

b. The name of the owner of the property; and

c. The amount of the delinquent bill.

(3) From and after the date of its recording in the office of the county recorder, the lien shall attach to the property until paid. A sale of the property to satisfy the lien shall be made upon judgment of foreclosure and order of sale. The city shall have the right to bring an action to enforce the lien in the county superior court at any time after its recording, but failure to enforce the lien by such action shall not affect its validity. The recorded notice and claim of lien shall be prima facie evidence of the truth of all matter recited therein and of the regularity of all proceedings prior to the recording therein.

(b) A prior recording for the purposes provided in this section shall not be a bar to a subsequent recording of a lien for such purposes, and any number of liens on the same lot or tract of land may be enforced in the same action.
(Code 1967, § 28-19, 27-45; Ord. No. 93.40, 11-18-93; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10; Ord. No. O2014.11, 3-20-14)

Sec. 27-196. Sewer charges.

(a) It is hereby determined necessary for the protection of the public health, safety and welfare and to conform with federal, state and local laws and regulations that a system of charges for sanitary sewer system use be established which allocates the cost to each user in such a manner that the allocated costs are proportionate to the cost of providing sanitary sewer system service to that user insofar as those costs can reasonably be determined. A proportionate charge shall be made to all users that discharge wastewater, either directly or indirectly, into the city sanitary sewer system. Such charges shall be based on the rates established pursuant to this article. In addition, each user which discharges any toxic pollutants which cause an increase in the cost of managing the effluent or the sludge of the sanitary sewer system shall pay for such increased costs.

(b) There are hereby established the following charges, which are in addition to any other charges set by city code, for sanitary sewer system use:

(1) Sewer charge which for the purposes of this division shall mean a charge for the recovery of sanitary sewer system operating and maintenance (O&M) costs, treatment costs and monitoring and testing costs; and

(2) Sewer service charge which for the purposes of this division shall mean a charge for the recovery of the costs of capital improvement and replacement in the sanitary sewer system.

(c) Users shall be assigned by the public works department to user classifications for billing purposes. A sewer bill may be rendered on a monthly, quarterly or annual basis. The bill shall distinguish between the sewer charge and the sewer service charge.

(d) A schedule of charges for the sewer charge and the sewer service charge shall establish separate charges for each user classification established by the public works department as required in subsection (c) of this section. The schedule of charges and user classifications may provide for a customized industrial user classification in which charges would reflect variations in discharge quality and quantity which may be adjusted monthly. Charges shall be designed to recover the cost of rendering sanitary sewer services for the year during which the charges shall be in effect. Charges shall be established maintaining adequate fund reserves to provide for reasonably expected variations in the cost of providing services, as well as variations in the demand for service.

(e) The internal services department shall annually review the sewer charge and the sewer service charge to determine whether any adjustments are necessary to properly recover the cost of providing sanitary sewer system services to each user. If any adjustments are necessary, the internal services department shall submit, in a report to the city council, a recommended schedule of charges for each user classification. The report shall contain data utilized in determining the

schedule of charges. The city council at a regular meeting shall adopt a notice of intention to adjust the charges and set a date for a public hearing on the proposed adjustment not less than thirty (30) days after the adoption of the notice of intention. After the public hearing, the city council may adopt by resolution the proposed adjustment. If adopted, the adjustment shall become effective thirty (30) days after the adoption of the resolution (see Appendix A).

(f) The sewer charge for each user classification will be determined by the following formula. The sewer charge includes two (2) components, a base charge and a rate per 1,000 gallons discharged. [Sewer charge = base charge + rate per 1,000 gallons].

(1) The base charge constitutes all monitoring and testing costs, allocated only between industrial and commercial users.

(2) The rate per 1,000 gallons discharged shall include the following components:

a. Operating and maintenance (O&M) costs, allocated by flow between all users: [user flow contribution x $/1,000 gallons].

b. Treatment costs allocated by flow between all users:

i. [User flow contribution x $/1,000 gallons].

ii. [User biological oxygen demand (BOD) loading x $/1,000 gallons].

iii. [User suspended solids (SS) loading x $/1,000 gallons].

(g) The sewer service charge for each user classification will be determined by the following formula: capital improvement and replacement costs allocated by flow between all users. [User flow contribution x $/1,000 gallons].

(h) Each user annually, in conjunction with a regular bill, will be given a summary of the sanitary sewer system charges and the basis for those charges.

(i) The charge system as set forth in this article for use of the sanitary sewer system shall take precedence over any terms or conditions of agreements or contracts between the city users which are inconsistent with the requirements of Public Law 95-217 and federal regulations issued pursuant thereto.

(j) Unless otherwise prohibited by state law, each sewer charge rendered under or pursuant to this article is hereby made a lien upon the corresponding lot, parcel of land, building or premises served by a connection to the sanitary sewer system of the city.

(k) The funds received from the collection of the sewer charge and sewer service charge shall be deposited daily by the internal services department into accounts within the water/ wastewater enterprise fund for the purpose of paying the costs of the sanitary sewer system including operation, maintenance, treatment, monitoring/testing and capital improvement and replacement.

(l) Wastewater quantity shall be determined as follows:

(1) For industrial users with installed water meters, the charges established in this section shall become effective from and after each user's first regular meter reading after the issuance of the industrial waste permit.

(2) Any user who fails or refuses to install a water meter to any source of water supply used, within thirty (30) days after written notice by the public works director to do so, shall be charged on water usage estimated by the public works director.

(3) If a user discharges sanitary sewage, industrial wastes, water or other liquids into the city sanitary sewer system, either directly or indirectly, and it can be shown by such party to the satisfaction of the public works director that a portion of the water as measured by the water meter or meters does not and cannot enter the sanitary sewer system, then the public works director may determine in such manner and by such method as he may find practical the percentage of metered water entering the sanitary sewer system. The quantity of water used to determine the sewer charge shall be that percentage, so determined, of the water measured by the water meter or meters; or the public works director may require or permit the installation of acceptable additional water or sewer meters at such party's expense and in such a manner as to determine the quantity of water actually entering the sanitary sewer system as so determined. If such additional water or sewer meters are installed, an additional charge may be made to cover the cost of reading and computing the flow of each such meter and such additional charge shall be added to each sewer charge bill rendered.

(4) After the installation of the measuring equipment is approved by the public works director, it shall be the obligation of such industrial user to conduct a test on such measuring equipment at least once every twelve (12) months to determine its accuracy and the results thereof shall be furnished in writing to the public works director. Those users seeking renewal of an industrial wastewater discharge permit or an interim industrial wastewater discharge permit shall file the results as part of the report required by Section 27-35 or Section 27-51, or both, of this chapter. It shall also be the industrial user's responsibility to notify the public works department within a reasonable time in advance so that the department may, if it chooses, have a witness present during such test. If upon any such test the percentage of accuracy is found to be within the accuracy tolerance as established by the manufacturer's specifications, such measuring equipment shall be determined to have correctly measured the quantity delivered to the sanitary sewer system. If, however, upon any such test the percentage of accuracy is found to be in excess of the accuracy tolerance specified by the manufacturer's specifications, then such measuring equipment shall be immediately adjusted to register correctly the quantity delivered to the sanitary sewer system. The billings to such industrial user shall be adjusted for a period extending back to the time when the inaccuracy began, if such time is ascertainable, or for a period extending back one-half of the time elapsed since the date of the last test or the date of the last adjustment, if the time is not ascertainable.

(5) All users for which the water supply is from other suppliers of water shall furnish to the city either a certified meter reading of water delivered to its plant or company, or a copy of the billing from the water supplier. In this event, the user's charges will be calculated and the same conditions will apply as if the city were the supplier of water to the user.

(6) For residential and commercial users with installed water meters, the charges established in this section shall become effective from and after each user's first regular meter reading.

(m) Wastewater quality shall be determined as follows:

(1) Testing by direct sampling, utilizing recognized field techniques, equipment and procedures, will be used for all industrial users permitted in Article I. The BOD (5) tests shall be considered the standard test, however, COD or TOC tests may be substituted in cases where it has been determined by the public works director that the BOD (5) test is not representative of actual wastewater loading. Waste water characteristics shall be determined by the public works department on the basis of monitored wastewater discharged, a certified statement from the user, or on the best available data as to the characteristics of such discharges.

(2) Any change in the ongoing process(es) employed by a user contributing industrial waste which results in a variation of more than twenty-five percent (25%) in one or more of the effluent loading concentrations shall be reported to the public works department within thirty (30) days of such change.

(3) If it is determined through testing that a variation exists between the user's certified data and the discharge characteristics monitored by the public works department, the city may adjust the sewer charge based on the monitored data from the original date of certification, unless written communication has occurred notifying the department of changes in loading and giving specific dates of changes.

(4) *Designated discharge*. Where sampling and gauging of a specific user is not practical for physical, economic, safety or other reasons, the public works director may designate values for concentrations of the wastes discharged into the sanitary sewer system for all users in the same standard industrial classification or subclassification.

(Code 1967, § 28-25, 27-78; Ord. No. 93.40, 11-18-93; Ord. No. 97.08, 2-13-97; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10; Ord. No. O2014.11, 3-20-14; Ord. No. O2014.27, 6-26-14)

Sec. 27-197. Reimbursement for remediation.

(a) When it is necessary to remediate a private sanitary sewer spill, release of industrial waste, or chemical release that has entered the city’s right-of-way, has the potential to enter the public right-of-way, or poses a threat to public health, safety and welfare, the property owner or responsible party using the property will be issued a written notice ordering the remediation of the area of concern.

(b) The property owner or responsible party using the property shall commence the remediation within one hour of receiving the written notice ordering remediation. Failure to follow the order to remediate within the specified time shall be cause for the city to remediate the city's right-of-way and any area that poses a threat to public health, safety and welfare.

(c) The property owner or responsible party using the property shall be charged for time and materials necessary to remediate the property to the extent necessary to eliminate the threat to public health, safety, and welfare and an administrative fee of five percent (5%) of the total remediation costs.

(d) Failure to comply with the written order to remediate or failure to reimburse the city for the costs of remediation and pay the administrative fee shall be cause for termination of water and sewer services to the property.
(Ord. No. 2007.83, 1-10-08)

Secs. 27-198—27-210. Reserved.

DIVISION 4. SEWER DEVELOPMENT FEES

Sec. 27-211. Purpose.

Due to the increasing costs associated with the expansion of the city's sewer system, it is necessary to implement a method of direct cost recovery from persons, firms or corporations responsible for new physical development within the city to provide a source of funding for the city's continued capital investment in the system.
(Code 1967, § 28-34, 27-101; Ord. No. 93.40, 11-18-93)

Sec. 27-212. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Commercial/industrial user means any user or establishment not defined as a dwelling unit.

Detached dwelling unit means any dwelling unit located on its own lot and not sharing a common wall with or not having adjoining walls with another dwelling unit.

Developer means the individual, firm, corporation, partnership, association, syndication, trust or other legal entity that is responsible for new physical development within the city and creating a demand for city sewer service.

Dwelling unit means a room or group of rooms within a building containing cooking accommodations. An apartment and a mobile home shall be considered a dwelling unit.

Townhouse means any dwelling unit located on its own lot and sharing a common wall with or having adjoining walls with another dwelling unit.
(Code 1967, § 28-35, 27-102; Ord. No. 91.15, 4-25-91; Ord. No. 93.40, 11-18-93)

Sec. 27-213. Fee schedule; collection; exemptions; disposition.

(a) The sewer development fee to be charged by the city is established by the city council (Appendix A of this code) and it may be amended by resolution of the city council.

(b) The fee imposed by this division shall be collected by the community development director, who shall be charged with the administration of this division. The fee for each dwelling unit or, in the case of commercial and industrial construction, the fee for each connection shall be collected by the community development director prior to the issuance of a building permit, and the fee with respect to any mobile home or recreation vehicle space shall be collected prior to the issuance of a construction permit for the development of a mobile home or recreation vehicle park. The community development director shall not issue a building permit or construction permit until the fees required by this division have been paid.

(c) Any separate water meter installed for irrigation purposes only will not be included in the calculation of the sewer development fee. In addition, no sewer development fee will be collected for the installation of fire lines not served by a water meter or unmetered fire taps to the water main for residential fire sprinkler systems.

(d) All revenue received from the sewer development fee shall be deposited in a utility revenue account to be used for capital expansion and enlargement of the city sanitary sewer system and/or for the retirement of debt service, both principal and interest, related to sanitary sewer system development.

(e) Multiple water meters used to serve a single service, or a single occupancy building, are not permitted unless approved by the community development director. If multiple meters are approved, the sewer development fees charged will be equivalent to the fee charged for a single meter installation based on demand requirements.

(f) The fee imposed by this division shall be collected for the remodel, expansion, or reconstruction of an existing detached dwelling unit only if any of the following apply:

(1) The new meter is larger than 1 inch.

(2) The remodel, expansion, or reconstruction creates one or more additional dwelling units.

(Code 1967, § 28-36, 27-103; Ord. No. 936.6A, 3-15-84; Ord. No. 936.7, 6-6-85; Ord. No. 86.64, 10-9-85; Ord. No. 88.80, 1-26-89; Ord. No. 91.15, 4-25-91; Ord. No. 93.40, 11-18-93; Ord. No. 97.08, 2-13-97; Ord. No. 97.20, 4-10-97; Ord. No. 97.03, 7-10-97; Ord. No. 2000.22, 5-31-00; Ord. No. 2001.17, 7-26-01; Ord. No. 2009.35, 9-10-09; Ord. No. 2010.02, 2-4-10; Ord. No. O2014.25, 6-26-14)

Sec. 27-214. Effective date.

This division shall become effective and have application to all work for which building permits are applied for on or after July 1, 2000.

(Code 1967, § 28-36, 27-104; Ord. No. 936.6A, 3-15-84; Ord. No. 936.7, 6-6-85; Ord. No. 86.64, 10-9-85; Ord. No. 88.80, 1-26-89; Ord. No. 93.40, 11-18-93; Ord. No. 97.03, 7-10-97; Ord. No. 2000.22, 5-31-00)

Chapter 28

SOLID WASTE[1]

ARTICLE I. IN GENERAL

Sec. 28-1. Definitions.

For the purpose of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

Abate or abatement means to remove, remediate or terminate a public nuisance or violation of this chapter.

Abatement cost means any and all expenses, costs and fees expended by the city or its designee in removing, enjoining or terminating a public nuisance or violation, as well as any damage to persons or property caused by the public nuisance or violation.

Alley means any public space or thoroughfare twenty (20) feet or less in width which has been dedicated or granted for public use.

Commercial container means any solid waste or recycling container used by a commercial establishment.

Commercial establishment means any public or private place, building or enterprise utilized for the conduct of business or industrial enterprise, but not to include any residential establishments.

Commercial heavy waste means dirt, rock, concrete, carpet, tile, glass, wet or heavy green waste from landscapers, plaster, asphalt, roofing materials, large panes of glass/mirrors, heavy metals, and any other heavy waste material produced by a commercial establishment.

Commercial non-collectible items means tires, paint, motor oil, gasoline, car parts and batteries, propane tanks, computer parts, medical waste, liquid waste, and any other dangerous or hazardous waste.

[1]**Cross references**—Placement of handbills in public places, § 3-18; Sewers and sewage disposal, Ch. 27.
State law reference—City to provide for solid waste disposal, A.R.S. § 49-741.

Commercial solid waste means all acceptable garbage and trash generated by commercial establishments except hazardous wastes and commercial non-collectible items.

Construction waste and demolition debris means dirt, rock, concrete, construction and demolition debris, lumber, railroad ties, rolls of carpeting, large panes of glass/mirrors, plaster, asphalt, and roofing materials.

Contain means to place refuse in a puncture resistant bag or box, or bundle and stack uncontained items in an appropriate manner so as to aid in the collection process.

Container means any receptacles used for the collection of refuse or recyclable materials and as approved by the public works director. This shall include sixty-five (65), ninety (90) and three hundred (300) gallon containers; four (4), six (6) and eight (8) cubic-yard front loaders; ten (10), fifteen (15), twenty-five (25) and forty (40) cubic-yard roll-offs; and cubic yard compactors less than thirty-one (31), thirty-one (31) to forty (40), and more than forty (40) cubic yards.

Contamination means materials that are placed in a solid waste container, including but not limited to, hazardous waste and residential/commercial non-collectibles, or other materials that are not designated as recyclables.

Contractor means a person, persons or corporate establishment engaged in the business of collecting, hauling or transporting commercial solid waste or special material in the city for disposal or any other purpose.

Domestic animal waste means feces or discarded bedding or flooring materials such as straw, sawdust, or other materials from yards, pens, corrals, stables or other containment from domestic animals or permitted wild animals weighing less than one hundred fifty (150) pounds.

Fence means any barrier erected, installed or planted to mark the boundaries of any lot or parcel of land and made of posts and wire, boards or similar materials or formed by a dense row of shrubs or trees.

Freestanding wall means any masonry barrier erected or constructed to mark the boundaries of any lot or parcel of land and made of masonry, concrete or similar materials and standing alone on its own foundation free of supporting frame or attachment.

Garbage means all putrescible solid wastes, except sewage and body wastes, including all organic wastes that have been prepared for or intended to be used as food or have resulted from the preparation of food, including all such substances from all public and private establishments and residences.

Green waste means brush, tree trimmings, grass, leaves or similar landscaping or plant material of an organic nature.

Hazardous wastes means all wastes that are hazardous by reason of their pathological, explosive, flammable, radiological or toxic nature, including, but not limited to, all wastes defined as hazardous by A.R.S. § 49-921.

Imminent health or safety hazard means any condition of real property, refuse or recycling container that places life, health, safety or property in high risk of peril when such condition is immediate, impending or menacing.

Industrial solid waste means any solid waste as defined in this section produced as a result of any industrial operations.

Injunctive relief means a court order temporarily or permanently enjoining any person or establishment from committing any act in violation of this chapter. Injunctive relief is in addition to all penalties and other remedies prescribed in this section.

Landscaper means any person or establishment who is in the business or profession of gardening or improving the appearance of land by planting or trimming trees, shrubs, grass, or other vegetation, or altering the contours of the ground.

Liquid waste means any waste material in the form of a liquid or that produces a liquid at any time, including but not limited to, grease, oil or food. This shall not include domestic sewage or hazardous waste materials.

Livestock waste means feces or discarded bedding or flooring materials such as straw, sawdust, or other materials from yards, pens, corrals, stables or other containment from livestock and fowl, including cattle, horses, pigs, chickens or other domestic or permitted wild animals weighing over one hundred fifty (150) pounds.

Medical waste means any solid or liquid waste generated in the diagnosis, treatment, testing or immunization of a human being or animal, or in any research relating to the diagnosis, treatment or immunization, or in the production or testing of biologicals, including but not limited to, medical sharps and biohazardous medical waste.

Material recovery facility (MRF) means any location designated as a drop-off location for recyclables.

Nonparticipant means a residential or commercial customer within any area of the city where the city recycling program is in effect who is not participating in the recycling program, either by choice or by action of the city.

Notice of violation (NOV) means a form notifying a responsible party of a violation of this chapter with reasonable specificity, the date and time of the violation, a deadline for compliance if applicable, and the right to a hearing to contest said violation.

Public nuisance means anything which is injurious or obnoxious to health or offensive to the senses, or is an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property by any considerable number of persons, or which obstructs the free passage or use, in the customary manner, of any street, alley, sidewalk or public property.

Public works director means the head of the public works department or designee.

Putrescible solid waste means solid waste which is capable of being decomposed by microorganisms with sufficient rapidity as to cause nuisances from odors or gases and capable of providing food for or attracting birds, insects, snakes, rodents or other animals capable of transferring a diseased bacterium or virus from one organism to another.

Recyclables means any solid waste as designated by the city from time to time, that has been separated from other solid waste for the purpose of being collected and recycled.

Recycling container means any container, whether operated for profit or not, where the public is asked to bring any materials to be donated or left to be recycled, reclaimed, processed or reused, including, but not limited to, newspapers, bottles, metal cans, and used clothing and furniture.

Refuse means any garbage, trash and collectible contained items.

Residential container means any solid waste and recycling container used by a residential establishment.

Residential establishment means any structure or premises used as a domicile, dwelling, or habitation, including residential single-unit dwellings, residential multi-unit dwellings, duplexes, patio homes, mobile home parks, trailer courts, rooming houses, boarding houses, assisted living facilities, apartments, condominiums, townhouses, combination residential and commercial structures, or any complex of the foregoing.

Residential multi-unit dwelling means a domicile, dwelling or habitation, including a rental dwelling, that contains more than one complete living space, duplex, mobile home park, trailer court, rooming house, boarding house, assisted living facility, apartment, condominium, townhouse, combination residential and commercial structure or any combination of the foregoing. However, this shall not include a residential facility pursuant to A.R.S. § 36-582.

Residential non-collectible items means dirt, rock, concrete, bricks, asphalt, roofing material, plaster, construction and demolition debris, lumber, railroad ties, rolls of carpeting, tires, paint, car parts, motor oil, gasoline, household/hazardous chemicals, car batteries, propane tanks, computer parts, large panes of glass/mirrors or any other dangerous or hazardous materials.

Residential single-unit dwelling means a building or structure or any parts thereof, used as a residence by one or more persons, including a domicile or habitation that contains only one complete living space. It also includes a residential rental dwelling unit and residential facility, pursuant to A.R.S. §§ 9-1301(10) and 36-582(b).

Responsible party means an occupant, lessor, lessee, manager, licensee, owner or other person having control over a structure or parcel of land. Also, in the event that remediation of property is required, any lien holder whose lien interest is recorded in the official records of the Maricopa County Recorder's office relating to said property.

Sanitary container means a container that does not have uncontained putrescible waste, an odor detectible within ten (10) feet with lid closed emanating from it, or vectors populating within it.

Scavenge means to collect by searching and removing solid waste items, including any items inside or around a container, public right-of-way or solid waste facility.

Sharps means objects such as syringes, needles and lancets that are used for insulin intake, blood samples or for other medical purposes.

Solid waste means any refuse, green waste, liquid waste, medical waste, domestic animal waste, and other discarded material, including solid, liquid, semisolid or contained gaseous material but not including domestic sewage or hazardous wastes or swimming pool drainage water.

Solid waste containers means any refuse or recycling container, for either residential or commercial use.

Solid waste fee means any fee associated with solid waste services provided by the city as established by city council resolution (see Appendix A).

Special collection means solid waste collection service provided by the city of collectible items only, over and above the usual level, including Freon containing white goods. Associated fees are established by city council resolution (see Appendix A).

Tare weight means empty weight of vehicle with driver.

Trash means combustibles such as paper, wood, yard trimmings or brush and noncombustibles including metal and glass.

Uncontained items means all large trimmings from trees and shrubbery, furniture, major appliances (excluding white goods), mattresses and other acceptable materials that are too large to be deposited into containers, that are generated by a residential single-unit dwelling within the city.

Waste means material of any kind that constitutes solid waste, refuse, animal or livestock waste, or medical waste. Waste includes abandoned or unidentified personal property left unattended on public sidewalks and rights-of-way or other public areas.

Weight-based service means a fee charged for collection or disposal services based on weight of the load, less the tare weight, as established by city council resolution (see Appendix A).

White goods means manufactured appliance items containing or previously containing Freon such as refrigerators, air conditioners or freezers.
(Ord. No. 86.47, § 2, 7-10-86; Ord. No. 92.52, 1-14-93; Ord. No. 94.35, 4-13-95; Ord. No. 2001.17, 7-26-01; Ord. No. 2004.03, 2-19-04; Ord. No. 2009.10, 3-5-09; Ord. No. 2010.02, 2-4-10; Ord. No. 2010.04, 3-25-10)

Sec. 28-2. Property Maintenance.

(a) It is unlawful for any person to fail to maintain residential or commercial real property under his control, in a clean manner, free from garbage, trash and waste, including but not limited to, solid waste, contamination, garbage, remodeling and demolition debris, hazardous materials and recyclables.

(b) It is unlawful for any person to fail to maintain areas adjacent or abutting to property under his control, including alleys, public walkways, public streets and rights-of-way, free from garbage, trash and waste, including but not limited to, solid waste, contamination, garbage, hazardous materials, recyclables and commercial and residential non-collectible items.

(c) It is unlawful for any person to interfere with or prevent the public works director or agents thereof, while the city is administering or enforcing this chapter. However, nothing in this section shall be construed to limit the pursuit of any remedy in any court of competent jurisdiction for property rights by the owner of any property within the city.
(Ord. No. 2009.10, 3-5-09; Ord. No. 2010.02, 2-4-10)

Secs. 28-3—28-10. Reserved.

ARTICLE II. ADMINISTRATION AND ENFORCEMENT

Sec. 28-11. Administration and enforcement.

(a) The public works director is assigned the primary responsibility of administering and enforcing this chapter and is granted the authority expressly and impliedly needed and necessary for enforcement. The public works director may designate any agents to exercise any administrative and enforcement powers as provided in this chapter.

(b) Nothing in this chapter shall preclude city employees from seeking voluntary compliance with the provisions of this chapter through notices to comply, warnings, or other informal devices designed to achieve compliance in the most efficient and effective manner under the circumstances.

(c) The authority of the city to enforce provisions of this chapter is independent of and in addition to the authority of other city officials to enforce the provisions of any other ordinances of the city.

(d) It is unlawful to violate any provision of this chapter. The failure to comply with any requirement of this chapter constitutes a violation of this chapter. Each instance of a violation of this chapter may be considered a separate offense and enforced and prosecuted accordingly. The public works director may seek remedies including injunctive relief, in addition to civil penalties and criminal penalties as set forth in this code. Remedies available pursuant to violations of this chapter are cumulative and not exclusive, and do not limit or supersede any and all other lawful remedies.

(e) Violations of this chapter shall be considered strict liability offenses.
(Ord. No. 86.47, § 2, 7-10-86; Ord. No. 2001.17, 7-26-01; Ord. No. 2004.03, 2-19-04; Ord. No. 2009.10, 3-5-09; Ord. No. 2010.02, 2-4-10)

Sec. 28-12. Violations and penalties.

(a) If a violation under this chapter occurs, the public works director or designee thereof has the authority to issue a notice of violation ("NOV"). The NOV may be issued in any of the following ways:

(1) Hand-delivered to any person at the address where the violation propagated or by personal service upon the owner, resident, occupant, tenant or other responsible person;

(2) Posted in a conspicuous location upon the real property where the violation propagated, or property adjacent to or abutting the location of the violation; or

(3) Mailed to the address where the violation propagated via certified mail with return receipt requested.

(b) The NOV shall contain the date and location of the violation, reference to the Tempe City Code provision or ordinance violated, and notice that the violation must be remedied within a specified time.

(c) Upon receipt of NOV, the violation must be remedied within the following time frame:

(1) As directed in writing in the NOV by the public works director or designee thereof depending on the severity of the violation, but in no event shall such time exceed thirty (30) days; or

(2) Immediately if the violation poses an imminent health or safety hazard.

(d) The city may correct or abate the condition constituting a violation at any time on or following the date stated in the NOV. In addition, should the violation constitute or escalate to an imminent health or safety hazard as determined by the city, or in the event of repeated violations as set forth in § 28-13 herein, the city may immediately abate the condition.

(e) Any person in violation of any of the provisions of this chapter will be charged for any and all abatement costs incurred, whether performed by the city or its designee, in addition to civil penalties and fees as set forth in §§ 1-7 and 1-8 of this code. The procedure for penalties and fees for violations of this chapter shall be in accordance with chapter 1 of this code.

(f) All abatement costs shall be billed to the violating party directly by and through the city municipal services statement or otherwise, as directed by the public works director.

(g) The city municipal services statement shall include a statement of the date and location of the violation, reference to the city code provision or ordinance violated, and notice that to dispute said abatement costs, the violating party must request a hearing from the Tempe Municipal Court within fourteen (14) days from the due date set forth therein unless additional time is specified by the public works director or designee thereof. Appearances shall be conducted pursuant to § 1-9 of this code. Should the party fail to appear or remit payment for the abatement cost within the time specified, judgment by default shall be entered in the amount of the abatement cost plus a penalty amount for the party's failure to appear.

(h) Any and all unpaid charges for abatement costs may be enforced by the city court, including delinquent fines, fees and penalties as provided by law. Any judgment or civil sanction may be collected as any other civil judgment, including but not limited to, recording a lien against the real property, lot or tract of land that is subject to the abatement costs as set forth herein. Enforcement of the lien may include sale of the property.

(i) All violations under this chapter constitute a public nuisance and are civil unless otherwise specified, and may be commenced by delivering a NOV to the person responsible for the violation. In addition to the above, the procedures in § 1-7 of this code may be utilized for civil violations of this chapter. The fines for civil violations applicable to this chapter shall be established by city council resolution.
(Ord. No. 86.47, § 2, 7-10-86; Ord. No. 2004.03, 2-19-04; Ord. No. 2009.10, 3-5-09; Ord. No. 2010.02, 2-4-10)

Sec. 28-13. Criminal violations.

(a) A violation of this chapter by any person three (3) times within a one year period shall constitute a misdemeanor and shall be punishable as set forth in § 1-7 of this code. For purpose of calculating the one-year period under this subsection, the dates of the commission of the offenses shall be the determining factor.

(b) A violation of § 28-51(b)(1) or § 28-51(b)(2) shall constitute a misdemeanor and shall be punishable as set forth in § 1-7 of this code.
(Ord. No. 2004.03, 2-19-04)

Sec. 28-14. Permit revocation.

Any permit issued under this chapter may be revoked by the public works director on the basis of violations of this chapter, city code or state law. The public works director may revoke a permit upon ten (10) days notice to the permit holder. The permit holder may request a hearing with the public works director prior to the expiration of the ten (10) day notice. Revocation shall be effective on the date set by the city.
(Ord. No. 2004.03, 2-19-04; Ord. No. 2010.02, 2-4-10)

Sec. 28-15. Recycling container impoundment.

(a) Any recycling container which is in violation of this chapter may be removed at the owner's expense. The public works director shall conspicuously attach to the container a notice that includes:

(1) The city code section which is being violated; and

(2) The date at which the container will be removed, which date shall be no sooner than ten (10) days after the posting of the notice, unless the violation is corrected.

(b) If the city impounds the container, the owner shall reimburse the city for the cost of the container's removal and impoundment. If the owner fails to reimburse the city within sixty (60) days of its removal, the city may dispose of the container.
(Ord. No. 2004.03, 2-19-04; Ord. No. 2010.02, 2-4-10)

Sec. 28-16. Penalties for leaving uncontained items at curb or alley more than ten (10) days prior to scheduled collection week.

(a) Upon notification by the solid waste section, a resident, owner or occupant shall have ten (10) days after the date of the notice to remove items placed for collection that do not conform to the requirements of § 28-51(d). Failure to remove items as required herein shall be a civil violation, punishable as set forth in § 28-12. In lieu of proceeding under § 28-12, the city may correct or abate the condition described in the notice. The responsible party will be charged for all costs incurred in correcting the condition. These costs will include personnel, equipment and disposal.

(b) If in the opinion of the public works director the items placed for collection constitute an imminent health or safety hazard, the city may immediately abate the hazard without notice. (Ord. No. 2004.03, 2-19-04; Ord. No. 2010.02, 2-4-10)

Secs. 28-17—28-20. Reserved.

ARTICLE III. AUTHORIZED COLLECTORS

Sec. 28-21. Collection to be by city or licensed collectors; requirements for issuance of license; terms of license; enforcement of license requirements.

(a) Only contractors licensed by the city may collect commercial solid waste within Tempe boundaries. Such license will be issued by the city under the following conditions:

(1) The city must have satisfactory evidence that the contractor possesses the necessary equipment and qualifications to collect, transport and dispose of commercial solid waste in a manner satisfactory to the city and in conformity with the state or county department of health laws, rules and regulations;

(2) The contractor desiring a license to collect commercial solid waste shall submit an application to solid waste services together with a license bond in an amount established by city council resolution, and an annual per-vehicle fee in an amount established by city council resolution. An annual audit may be performed by the city to establish the contractor's gross receipts from the collection within the city. The resultant annual fee shall be two percent (2%) of the gross receipts should such percentage exceed the per-vehicle fee remitted at the time of application; otherwise, the per-vehicle fee remitted at the time of application will constitute the annual fee per vehicle;

(3) The contractor's application shall include the name, business and residence addresses of all owners, partners, general managers and principal officer, as well as business references and such other information as deemed necessary; and

(4) Any license granted by solid waste services shall be nontransferable and may be suspended or cancelled upon failure or refusal of a licensee to comply with the provisions of this chapter and after notice and hearing respecting the same. The term of the license shall be for the fiscal year commencing July 1 and ending June 30. Application for renewal shall be made at least thirty (30) days prior to expiration of a valid license. Fees may be prorated monthly on licenses issued during the fiscal year.

(b) The contractor will be expected to furnish the city with any available equipment to assist the city in the collection of commercial solid waste during and for any period of time when the city might be unable to serve any or all of its commercial customers. The city will pay the contractor for such service based on the contractor's current standard rates for servicing commercial bulk containers.

(c) Any person who has a license for the collection and disposal of solid waste revoked, has been denied a license or who is affected by any notice issued in connection with the enforcement of any provision of this chapter, may request and shall be granted a hearing on the matter before the city council, provided such person shall first file with the city clerk a written petition requesting such hearing and setting forth a brief statement of the grounds therefor within ten (10) days after the day the notice was served. Upon receipt of such petition, the city council shall set a time and place for such hearing and shall give the petitioner special written notice

thereof. Should the city council concur that there has been a violation of this chapter, they may take such action as is justified.

(d) All containers must be clearly marked with the company name and phone number. Containers of non-permitted companies may not be placed for use in city boundaries.
(Ord. No. 86.47, § 2, 7-10-86; Ord. No. 2004.03, 2-19-04)

Sec. 28-22. Insurance and surety bond required of contractors.

(a) Contractors will obtain, keep in force and maintain public liability and property damage insurance in the sum of one million dollars ($1,000,000) for personal injury to any one person, one million dollars ($1,000,000) for personal injuries sustained by all persons in any one accident and five hundred thousand dollars ($500,000) with respect to property damage arising from any single occurrence, to indemnify the contractor for loss by virtue of any disability arising from his collection, hauling and disposal activities within the city. The city will be named as co-insured. Evidence of such insurance shall be furnished to the city at the time of license application and at the time of any renewal.

(b) The contractor shall provide a cash bond in the amount of five hundred dollars ($500) and in a form acceptable to the city, such bond to be conditioned upon the payment of any charges incurred by the city in correcting any failure by the contractor to perform in accordance with the requirements of his license.
(Ord. No. 86.47, § 2, 7-10-86; Ord. No. 2004.03, 2-19-04)

Sec. 28-23. Vehicle requirements.

All vehicles used for solid waste collection within the city must be inspected and approved by the city and meet the following requirements:

(1) All vehicles must be in good condition and repair. The bodies shall be of readily cleanable construction, watertight and metal-lined to the full width and height of the body, with all seams welded;

(2) Vehicles shall be maintained and operated in a clean and neat manner so as to prevent solid waste from spilling, leaking and blowing. All vehicles shall have enclosed bodies;

(3) The outside of each vehicle must be clearly identified by the name and telephone number of the contractor operating the vehicle; and

(4) Any open-top roll off container must have a cover which prevents solid waste or contents from spilling or flowing onto the roadway.
(Ord. No. 86.47, § 2, 7-10-86; Ord. No. 2004.03, 2-19-04)

Secs. 28-24—28-30. Reserved.

ARTICLE IV. CONTAINERS

Sec. 28-31. Containers—Use required; provision by city; capacity; exception for certain trash.

(a) No owner, tenant, lessee or occupant of any public or private establishment or residence shall permit to accumulate upon his premises any garbage except in tightly covered, portable containers of rust-resistant metal, rubber, plastic or other similar material meeting the approval of the public works director.

(b) The city shall provide containers for all residential establishments and commercial customers serviced by the mechanized collection system. Where there is an alley in the rear of residential establishments, the public works director shall assign a large city-owned container of three hundred (300) gallons to the appropriate number of residential establishments. Small city-owned containers of ninety (90) gallons shall be assigned to residential establishments which have no alley. Commercial establishments will, under agreement with the city, receive collection service including the appropriate three hundred (300) gallon or metal bulk container ranging in size from one to eight (8) cubic yards.

(c) Uncontained items need not be kept in the above type containers if such items are handled as provided in § 28-52.
(Ord. No. 86.47, § 2, 7-10-86; Ord. No. 94.35, 4-13-95; Ord. No. 2001.17, 7-26-01; Ord. No. 2004.03, 2-19-04; Ord. No. 2010.02, 2-4-10)

Sec. 28-32. Same—When not provided by city; number required.

(a) The owner, tenant, lessee or occupant of a residential establishment not serviced by the mechanized collection system shall provide his own standard garbage containers of sufficient number to maintain a clean and sanitary condition on his premises. Containers shall not be less than ten (10) gallons nor more than thirty (30) gallons capacity and shall be of standard, tapered, noncorrosive, nonabsorbent construction. All containers shall have a lid and be equipped with suitable handles for lifting. Plastic bags are a permissible substitute.

(b) The owner, tenant, lessee or occupant of any place of business, commercial or industrial premises not served by the city shall have sufficient containers to meet their needs.
(Ord. No. 86.47, § 2, 7-10-86; Ord. No. 2004.03, 2-19-04)

Sec. 28-33. Same—To be kept sanitary and in repair; replacement.

(a) Residential and commercial garbage and recycling containers which are provided by the city shall be kept in good repair by the city. Containers will be replaced when found to be no longer serviceable through disrepair. All residential customers must maintain their city-provided plastic containers in a clean and sanitary condition.

(b) Non-city-owned containers shall be kept in good repair by the owner. Such containers found to be no longer serviceable through disrepair or maintained in an unsanitary condition shall be condemned for further use. Legal notice of such condemnation shall consist of a label or tag affixed to the unsatisfactory container. Receptacles not placed in a satisfactory condition within

ten (10) days shall be removed and destroyed by the city. All customers shall maintain their alleys and the area surrounding the garbage containers free from garbage and other health hazards.
(Ord. No. 86.47, § 2, 7-10-86; Ord. No. 2004.03, 2-19-04)

Sec. 28-34. Same—Placement for collection; removal after collection.

(a) All solid waste containers (garbage and recycling) prepared for the city collection service shall be placed at the front curb, unless otherwise designated by the public works department, in an easily accessible manner.

(b) All containers must be placed in such a manner that the lids open toward the street or alley in order to facilitate proper dumping of the container by the mechanized collection vehicles.

(c) Containers shall be placed for collection no earlier than 6:00 p.m. on the day preceding the scheduled collection day. Containers must be removed from the curb no later than 8:00 p.m. on the day of collection. If a violation of this subsection necessitates the city to pull back the container from the front curb, the city may assess a charge to the property owner. This subsection shall not apply to containers that the city has placed permanently at the front curb.

(d) Containers shall not block the sidewalk or otherwise be a hazard to pedestrian or vehicular traffic.
(Ord. No. 86.47, § 2, 7-10-86; Ord. No. 94.35, 4-13-95; Ord. No. 2001.17, 7-26-01; Ord. No. 2004.03, 2-19-04)

Sec. 28-35. Same—Tampering with, removing prohibited.

(a) No person shall uncover or cause to be uncovered, tip over or cause to be tipped over or molest or cause to be molested in any manner any container or garbage legally placed for removal.

(b) Each ninety (90) gallon city-owned garbage and recycling container shall be assigned to the property and not to the occupant of the property. No person who occupies any property to which the ninety (90) gallon container has been assigned may remove the container from the assigned property for any reason.

(c) No person, unless authorized by the public works director may move or relocate any three hundred (300) gallon city-owned container from its assigned location.
(Ord. No. 86.47, § 2, 7-10-86; Ord. No. 2001.17, 7-26-01; Ord. No. 2004.03, 2-19-04; Ord. No. 2010.02, 2-4-10)

Sec. 28-36. Containers for commercial establishments may be supplied by contractors.

(a) Garbage containers, roll off bodies and compactors may be supplied by the contractor. All containers, roll off bodies and compactors shall be painted and maintained in a clean, neat and sanitary manner at all times and shall have the name and phone number of the contractor identified legibly thereon.

(b) A commercial establishment shall maintain enough containers to accommodate the solid waste disposal needs of the establishment as determined by the public works director.

(c) All commercial solid waste shall be placed in standard garbage containers or compactors which shall be placed in inconspicuous places determined by the public works director.
(Ord. No. 86.47, § 2, 7-10-86; Ord. No. 2001.17, 7-26-01; Ord. No. 2004.03, 2-19-04; Ord. No. 2010.02, 2-4-10)

Secs. 28-37—28-40. Reserved.

ARTICLE V. COMMERCIAL COLLECTION

Sec. 28-41. Hours of commercial collection; failure of contractor to collect solid waste; notice of violation of chapter.

(a) Commercial solid waste shall not be removed from commercial or industrial property that is within five hundred (500) feet of residential development between the hours of 6:00 p.m. and 6:00 a.m.

(b) Solid waste shall not be allowed to collect on any property in unsanitary quantities. The contractor shall, within eight (8) working hours of a telephoned request by the city, service containers at specified locations. Should the contractor fail to respond to the above request and the city elects to empty the containers and otherwise collect the solid waste, the contractor shall reimburse the city at double the rates established by city council resolution.
(Ord. No. 86.47, § 2, 7-10-86; Ord. No. 2001.17, 7-26-01; Ord. No. 2004.03, 2-19-04)

Sec. 28-42. Repealed.

(Ord. No. 86.47, § 2, 7-10-86; Ord. No. 2001.17, 7-26-01; Ord. No. 2004.03, 2-19-04)

Sec. 28-43. Notice of intent to commence or terminate service to commercial establishments.

The contractor shall provide the city with written notice of intent to service any new commercial establishment prior to commencing service, including the name and address of the commercial establishment, the ownership, number and size of standard garbage containers and the days of collection. The contractor shall provide the city with a written notice of intent to service any existing commercial establishment being serviced by the city at least thirty (30) days before commencing service, including the name and address of the commercial establishment, the ownership, number and size of standard garbage containers to be serviced and the days of collection. The contractor shall provide the city and the commercial establishment with thirty (30) days' written notice before discontinuance of service, and such termination shall be on the first days of the month.
(Ord. No. 86.47, § 2, 7-10-86; Ord. No. 2004.03, 2-19-04)

Secs. 28-44—28-50. Reserved.

ARTICLE VI. SOLID WASTE DISPOSAL

Sec. 28-51. Prohibited disposal.

(a) Any solid waste which does not comply with the provisions of this chapter will not be collected by the city and will subject the owner or occupant of the property, or the owner or occupant of abutting property in the case of noncomplying solid waste in the right-of-way, to penalties for violation of the city code.

(b) The following shall not be placed in city-owned containers or in any alley, right-of-way, or curbside:

(1) Hazardous wastes;

(2) Septic tank or cesspool pumpings and similar liquid waste with the exception of semi-liquid waste from city sewer cleaning equipment; or

(3) Dirt, rock, construction or demolition material, or non-collectible materials.

(c) Any person who is in the business of trimming trees, shrubs or brush for compensation shall be solely responsible for disposal of all brush, tree trimmings, grass, leaves or similar landscaping or plant material generated in connection with such activity.

(d) Residents shall not place uncontained items at curb or alley more than ten (10) days prior to the scheduled collection week.
(Ord. No. 86.47, § 2, 7-10-86; Ord. No. 92.52, 1-14-93; Ord. No. 94.35, 4-13-95; Ord. No. 2004.03, 2-19-04)

Sec. 28-52. Containment and disposal requirements.

(a) *Collection of garbage.* All garbage must be placed in the city-owned containers unless otherwise properly handled as uncontained items as provided in this section.

(b) *Garbage, etc., to be placed in bags.* All garbage, grass clippings, leaves, and similar material shall be placed in plastic bags or other watertight containers and securely sealed prior to placement in a city-owned container or for collection.

(c) *Collection of uncontained items in areas not served by or partially served by city.* In areas where uncontained items cannot be entirely handled in city-owned containers or where city-owned containers are not provided, all items shall be placed next to the property line parallel to the alley or street in as orderly a fashion as possible. Where there is no alley, uncontained items shall be placed parallel to the property generating it but shall not be placed around or adjacent to any mechanized collection container in such a manner as to interfere with its being emptied. Where an alley is accessible, the uncontained items shall be placed in the alley parallel to the property generating it. The solid waste division will provide regularly scheduled collection to remove properly prepared materials from the alley and along the street.

(d) *Special collections of uncontained items*. Residents desiring collection on a schedule other than the city's regular schedule, or residents desiring collection which is over and above the level of service provided in this chapter, shall call the public works department to request this service. The resident shall pay for the additional service at the rate set by the city council (see Appendix A Fee Schedule).

(e) *Tree trimmings, grass clippings and cactus.* Any large trimmings from trees and shrubbery that cannot be readily placed in containers or bagged as required in subsection (b) above shall be cut in lengths not to exceed forty-eight (48) inches and placed in stacks one foot apart, parallel and next to the property generating it. All grass clippings and leaves must be bagged. All cactus and parts of cactus plants shall be placed in a sealed cardboard box and placed separately from other uncontained items.

(f) *Animal waste.* Waste from small animals or pets shall be placed in a bag, securely sealed and placed in the regular garbage containers for disposal. Wastes from larger animals such as horses and other livestock kept as pets or for personal pleasure may be placed out for collection, provided the waste is dry, placed in a plastic bag, securely sealed, and placed in a garbage container for collection.
(Ord. No. 86.47, § 2, 7-10-86; Ord. No. 92.52, 1-14-93; Ord. No. 94.35, 4-13-95; Ord. No. 2004.03, 2-19-04)

Sec. 28-53. Disposal of refuse on public or private property.

No person shall place or cause to be placed any solid waste or other materials upon any public or private property with the city except as specifically permitted in this chapter or at sites designated by the city council.
(Ord. No. 86.47, § 2, 7-10-86; Ord. No. 2004.03, 2-19-04)

Sec. 28-54. Burning garbage.

No person shall burn or attempt to burn garbage within the city limits.
(Ord. No. 86.47, § 2, 7-10-86)

Sec. 28-55. Building contractors to leave areas clean.

All building owners and contractors shall, upon the completion of construction, remove at their sole cost and expense all trash of every nature, description or kind which has resulted from the building of such structure, including all lumber scraps, shingles, plaster, brick, stone, concrete and other building material.
(Ord. No. 86.47, § 2, 7-10-86; Ord. No. 2004.03, 2-19-04)

Sec. 28-56. Accumulating combustible rubbish; haystacks.

(a) No person shall place upon or permit to remain upon any roof or in any court, yard, vacant lot, alleyway or open space any accumulation of wastepaper, waste hay, grass, straw, weeds, litter or combustible or inflammable waste or rubbish of any kind. All weeds, grass, vines and other growth which endanger property or are liable to be fired shall be cut down and removed by the owner or occupant of the property.

(b) Hay may be stored in the city where the hay is properly baled and properly stacked; provided, that storage of hay does not violate the provisions of this code.
(Ord. No. 86.47, § 2, 7-10-86; Ord. No. 2004.03, 2-19-04)

Sec. 28-57. Dumping solid waste on streets or premises prohibited.

No person shall deposit or cause to be deposited upon any street, alley or premises in the city any garbage, trash or solid waste of any kind except as specifically permitted in this chapter. It shall be the duty of all solid waste collection personnel, public or private, to immediately clean up any refuse spilled during the collection process.
(Ord. No. 86.47, § 2, 7-10-86; Ord. No. 2004.03, 2-19-04)

Sec. 28-58. Dead animals.

Dead dogs, cats and other animals weighing less than seventy-five (75) pounds upon any public way will be removed and disposed of upon call to the public works department. Dead animals shall not be placed in garbage containers. Condemned animals or parts of animals from slaughterhouses or similar places regardless of size will not be collected by the city.
(Ord. No. 86.47, § 2, 7-10-86; Ord. No. 2004.03, 2-19-04)

Sec. 28-59. When garbage becomes city property.

Garbage deposited in city-owned containers shall become the property of the city, and removal of any garbage shall be unlawful unless authorized by the public works director.
(Ord. No. 86.47, § 2, 7-10-86; Ord. No. 2001.17, 7-26-01; Ord. No. 2004.03, 2-19-04; Ord. No. 2010.02, 2-4-10)

Sec. 28-60. Reserved.

ARTICLE VII. FEES

Sec. 28-61. Collection and dump fees generally.

(a) Wherever garbage and trash collection services are needed, the charges for such service shall be established by city council resolution and payable monthly (see Appendix A).

(b) Single-family dwelling accounts shall not be eligible to petition the city to temporarily discontinue solid waste service.

(c) In the event that any customer shall fail to pay for garbage and trash services as provided in this chapter, the city is authorized to discontinue water service or other city services to the property until such time as payment is made.

(d) Charges for garbage and trash service to newly constructed structures shall commence upon final inspection and approval of such structures by the city building inspector or once the property requires service.
(Ord. No. 86.47, § 2, 7-10-86; Ord. No. 2004.03, 2-19-04)

Sec. 28-62. Collection and fees for areas outside city.

(a) Solid waste services may be rendered to areas outside the city at the option of the city and subject to termination at any time.

(b) The fees for collection in such areas shall be one and one-third (1⅓) times the fee for similar service rendered within the city.
(Ord. No. 86.47, § 2, 7-10-86; Ord. No. 2004.03, 2-19-04)

Secs. 28-63—28-70. Reserved.

ARTICLE VIII. RECYCLING CONTAINERSError! Bookmark not defined.

Sec. 28-71. Permits required.

It shall be unlawful for any person, firm or corporation to maintain a recycling container within the city without having first obtained a city permit.
(Ord. No. 89.27, 6-29-89; Ord. No. 2004.03, 2-19-04)

Sec. 28-72. Application.

(a) Applications for recycling container permits shall be made to the public works department on a form provided by the department. The application shall include the following information:

(1) The name and address of the owner or operator and a telephone number where the owner or operator or an agent of the owner or operator can be reached; and

(2) The location, size and type of proposed recycling container.

(b) The application shall be accompanied by a written statement from the owner of the property describing where the container is to be placed and granting permission for the container placement.

(c) If the application is for the placement of a container on a developed site as a condition precedent to obtaining a permit under this article, the property owner must obtain site plan approval from the community development department with regard to the placement, color, screening, signage and any other condition of or pertaining to the container as set forth in the Zoning and Development Code.
(Ord. No. 89.27, 6-29-89; Ord. No. 97.20, 4-10-97; Ord. No. 2004.03, 2-19-04; Ord. No. 2004.42, 1-20-05; Ord. No. 2010.02, 2-4-10)

Sec. 28-73. Containers.

(a) Each recycling container shall have a firmly closing lid and have a capacity of not less than three (3) cubic yards and not greater than six (6) cubic yards. The container shall be constructed of painted metal, rubber, plastic or alternate material with written approval of the public works director.

(b) Containers shall be clearly marked to identify the materials requested to be left for recycling, the name of the operator or owner of the recycling container, and a telephone number where the owner, operator or agent of the owner or operator may be reached at any time. The size of the sign or markings on any side of the container shall not exceed twenty-five percent (25%) of the total area of the same side of the container.

(c) The exterior color of the container shall be a solid color approved by the public works director.

(d) No container shall identify a religious or nonprofit corporation without the written permission of such religious or nonprofit corporation; said permission must be submitted at the time application is made for a recycling container permit.
(Ord. No. 89.27, 6-29-89; Ord. No. 2001.17, 7-26-01; Ord. No. 2004.03, 2-19-04; Ord. No. 2010.02, 2-4-10)

Sec. 28-74. Litter and trash prohibited.

No person shall place any materials in any recycling container except the materials named on the outside of the container. No person shall leave any materials outside of a container.
(Ord. No. 89.27, 6-29-89; Ord. No. 2004.03, 2-19-04)

Sec. 28-75. Repealed.
(Ord. No. 89.27, 6-29-89; Ord. No. 2001.17, 7-26-01; Ord. No. 2004.03, 2-19-04)

Sec. 28-76. Repealed.
(Ord. No. 89.27, 6-29-89; Ord. No. 2004.03, 2-19-04)

Chapter 29

STREETS AND SIDEWALKS[1]

ARTICLE I. IN GENERAL

Sec. 29-1. Use of public rights-of-way; permit.

(a) No person shall erect, maintain or use any booth, stand, counter or vehicle upon any public street, sidewalk, alley or other public right-of-way, for any purpose whatsoever, without first obtaining a permit from the finance and technology director or his authorized representative. Such permit shall only be issued upon specific recommendation of the public works director and the police chief, or their authorized representatives.

(b) Any person issued a permit under subsection (a) of this section shall also comply with all other applicable sections of the code and all other applicable laws, ordinances and regulations issued under the authority of laws or ordinances.
(Code 1967, §§ 23-40, 23-41; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Sec. 29-2. Adjacent property owners to maintain sidewalks, gutters, alleys.

(a) It shall be the duty of all persons to keep the sidewalks in front of the premises owned, occupied or controlled by them and the land that lies between the back of the curb and the right-of-way on the side of the street on which their premises are located in good repair and free and clear of all grass, weeds and rubbish.

(b) Such persons shall also:

(1) Keep the branches of all trees growing along such sidewalks so trimmed and cut as not to interfere with the free use of any part of the sidewalk or street by the public for travel;

(2) Keep all irrigating and waste ditches appertaining to, running by or adjacent to such premises, together with the borders thereof, in good repair so as to prevent the escape of water therefrom and so as not to obstruct the easy and natural flow of the water therein;

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[1]**Cross references**—Advertising and signs, Ch. 3; obstruction or interfering with use of public ways, § 22-4; naming of streets, § 25-36 et seq.

State law reference—General authority relative to streets, A.R.S. §§ 9-276, 9-601 et seq.

(3) Maintain each alley that is adjacent to their premises free of weeds and debris to the center line of such alley.

(Code 1967, § 30-2)

Sec. 29-3. Dustproofing alleys.

(a) All alleys used by vehicular traffic for access to abutting parking areas within the city shall be maintained in a dust-free condition by the using property owners. Upon the failure of using property owners to properly maintain an alley in a dust-free condition, the city manager may recommend to the city council that a particular alleyway or portion thereof be dustproofed at the expense of those abutting property owners using the alley for access to their parking areas. Upon approval by the city council, the city manager shall send or cause to be sent a written notice by certified mail to the owners of record adjacent to such alley or portion thereof to abate the condition. If such owners of record to whom written notice has been sent neglect, fail or refuse for more than sixty (60) days from the date of mailing such notice to dustproof such alley or portion thereof to the satisfaction of the public works director, the city council may direct the city director to cause the alley to be dustproofed and to charge the abutting property owners using the alley for vehicular access to their property, such charge to be prorated on a frontage basis.

(b) Within thirty (30) days after the necessary dustproofing has been completed and the cost of same determined by the city, the public works director shall send written notice to the abutting property owners of their pro rata share of the cost of such dustproofing. If remittance has not been received by the city within thirty (30) days from and after mailing such notice to the abutting property owners of record, the public works director shall prepare duplicate copies of the notice and claim of lien and send one copy to the owner of record and record the remaining copy with the office of the county recorder within ten (10) days after the expiration of such thirty-day remittance period. From and after the date of recording such notice and claim of lien with the county recorder, the city shall have a lien upon the buildings, grounds and premises for the amounts owed by the respective property owners. The city shall have the right to bring an action to enforce the lien in the superior court of the county at any time after the recording of the notice and claim of lien, but failure to enforce the lien shall not affect its validity. The recorded lien shall be prima facie evidence of all matters recited therein and in the regularity of all proceedings prior to the recording thereof. Prior charges for the purposes provided in this section shall not be a bar to a subsequent charge or charges for the aforementioned purposes and any number of liens on the same lot or tract of land may be enforced in the same action.

(Code 1967, §§ 30-20, 30-21; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Sec. 29-4. Working within right-of-way.

(a) For the purposes of this section, the following words or phrases shall have the meanings respectively ascribed to them by this subsection:

(1) *Motor vehicle* means any vehicle required to be licensed or registered under the laws of the state.

(2) *Protective devices* include, but are not limited to, orange vest (daytime), reflectorized orange vest (nighttime), traffic cones, barricades, flashing lights, flares and any other traffic-control device as required by the city.

(3) *Right-of-way* means all of that property used as a traveled portion of public roadways for motor vehicles lying between the exterior boundary lines of any area granted to or received by the city by grant, gift, easement, deed, dedication or operation of law for street purposes.

(4) *Worker* means any person whose duties cause his presence in the right-of-way.

(b) No person shall perform any work within the right-of-way until he is properly equipped with protective devices. Traffic-control devices shall be approved by the traffic engineer as set forth in Chapter 19, Article XV, Traffic Barricade Program.
(Code 1967, § 30-7.1; Ord. No. 2009.20, 5-7-09; Ord. No. O2014.65, 11-13-14)

Secs. 29-5—29-15. Reserved.

ARTICLE II. ENCROACHMENTS AND OTHER ACTIVITIES IN PUBLIC RIGHTS-OF-WAY

Sec. 29-16. Definitions.

For the purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section, unless the context clearly indicates a different meaning:

Alley and alleyways means lanes or passageways for use as a means of access to the rear of lots or buildings. Alleys and alleyways are not in any way to be considered thoroughfares.

Public rights-of-way means that property used as public thoroughfares and lying between the exterior boundary lines of any area granted to or received by the city by grant, gift, easement, deed, dedication or operation of the law for street, alley, walk or utility purposes.

Sidewalk means that portion of a street between the curb lines or the lateral lines of a roadway and the adjacent lines, intended for use of pedestrians.

Street means the entire width between the boundary lines of every way, when any part thereof is open to the use of the public for purposes of vehicular travel.

Vehicle means a conveyance which is self propelled.
(Code 1967, § 30-3; Ord. No. O2014.06, 1-23-14)

Sec. 29-17. Applicability.

This article shall be the rules and regulations governing encroachments upon and work within the public rights-of-way in the city.
(Code 1967, § 30-4)

Sec. 29-18. Administration; enforcement.

(a) The public works director or his authorized agent is designated as administrator and enforcing officer of this article, unless otherwise specified.

(b) Any person who commences or causes to be commenced any work in the public right-of-way for which a permit or license is required by this code without first having obtained a permit or license therefor, as applicable, shall pay, in addition to the permit or license fee for such work, an investigation fee. The amount of the permit or license fee and the amount of the investigation fee shall be as established by the city council by resolution (see Appendix A).

(c) Any person who works in the public right-of-way with or without a permit or license shall defend, indemnify and hold harmless the city, its officials, officers, agents, volunteers and employees against any and all damages which may arise out of such work and shall comply with all requirements of the permit or license.

(d) The city engineer may revoke any license or permit issued or may impose an investigation fee under the provisions of this article. The decision to revoke a permit or license or impose an investigation fee may be appealed directly to the city manager. Any such appeal shall be in the form of a written petition to the city manager and shall be filed with the city engineer not later than ten (10) days after the date the license or permit is revoked or investigation fee is imposed.
(Code 1967, § 30-7; Ord. No. 2005.75, 10-20-05; Ord. No. 2008.56, 11-6-08; Ord. No. O2014.65, 11-13-14)

Sec. 29-19. General regulations.

(a) No work of any nature shall be performed in a public right-of-way, except under a permit or license issued by the city engineer, unless otherwise allowed by this code or any other ordinance of the city. The city engineer shall provide the forms for and set forth the rules, regulations and procedures governing the issuance of permits and licenses.

(b) An encroachment permit may be issued for encroachments of a temporary and removable nature, including but not limited to, awnings and commercial signs. A license shall be issued for encroachments of a more permanent nature, including but not limited to, buildings and underground parking facilities that impair the city's ability to use the right-of-way. The regulations and procedures established by the city engineer shall include procedures for evaluating which form is to be used.

(c) The standard specifications and details of the city are made a part of this article and incorporated in this article by reference. All work performed in a public right-of-way shall be accomplished in accordance with these specifications and details.

(d) All permittees and licensees shall give the city engineer twenty-four (24) hours' notice before commencing any work within a public right-of-way.

(e) Permit and license fees shall be set by the city council by resolution. The city engineer with the concurrence of the city manager shall provide the city council with a list of the various classes of permits and licenses and the recommended charge for each class (see Appendix A).

(f) A notice of completion shall be prepared by the city engineer and filed by the city clerk in the office of the county recorder on all work performed for the city by contract in a public right-of-way, the total contract price of which exceeds two thousand dollars ($2,000).
(Code 1967, § 30-6; Ord. No. 2008.56, 11-6-08)

Sec. 29-20. Discharge of water from private premises.

(a) No person shall flow, discharge or run from his premises, residence or place of business upon any street, alley or public right-of-way within the city any water or other liquid unless authorized by the city code.

(b) Residential swimming pool water of less than thirty-five thousand (35,000) gallons is authorized to be discharged as follows in the order of preference:

(1) To landscaping on the pool owner's residential property;

(2) To the sewer cleanout on the pool owner's residential property if the flow is constantly monitored and no chlorine has been added to the pool water for at least three (3) days before discharge, and the owner is liable for any sewer backup as a result of discharging swimming pool water to the sewer cleanout on their property; or

(3) To a street or public right-of-way not including alleys, as long as the water is dechlorinated, discharged using a pump sized no more than 1.5 horsepower and the drainage is monitored to ensure it does not cause flooding or damage, create a traffic hazard or otherwise constitute a nuisance under § 21-3(b)(18) of this code.

(c) Water drained from commercial swimming pools and any residential swimming pool drainage of more than thirty-five thousand (35,000) gallons shall be discharged upon the owner's property, or to the sanitary sewer system if a permit is issued for the discharge by the public works department under § 27-10(c)(1) of this code.
(Code 1967, § 30-7(a); Ord. No. 2010.04, 3-25-10)

Sec. 29-21. Creating obstructions.

No person shall, or cause any person in his employ to, obstruct or place any obstruction upon, across or along any street, alley or public right-of-way so as to hinder the free and proper use thereof. Temporary obstructions may be permitted, in writing, by the city engineer for construction purposes and for the moving of buildings, when it can be shown that an undue hardship would result or when such an obstruction is necessary for the preservation of the public safety. No such obstruction shall be left in place for a period of time longer than permitted to accomplish its purpose.
(Code 1967, § 30-7(b))

Sec. 29-22. Soliciting, selling in right-of-way.

No portion of any public right-of-way shall be used for soliciting, merchandising, vending or selling of any nature, except where otherwise allowed by this code or any other ordinance of the city.
(Code 1967, § 30-7(d))

Sec. 29-23. Signs, other advertising structures in right-of-way.

No lights, banners or advertising structures shall be placed within, upon or across a public right-of-way, except by permit or license granted upon application to the city engineer. Signs placed outside of the public right-of-way and near thereto shall not encroach upon the right-of-way, except as provided by the sign encroachment diagram incorporated by reference in this article, and on file with the city clerk, entitled "Right-of-Way Sign Encroachment". Such a permit shall be granted upon a showing that the public safety and welfare will not be endangered thereby.
(Code 1967, § 30-7(g); Ord. No. 2008.56, 11-6-08)

Sec. 29-24. Prohibited use of public right-of-way.

It shall be unlawful for any person to use a public street, highway, alley, lane, parkway, sidewalk or other right-of-way, whether such right-of-way has been dedicated to the public in fee or by easement, for lying, sleeping or otherwise remaining in a sitting position thereon, in a way that impedes the right-of-way or causes a safety risk, except in the case of a physical emergency or in the administration of medical assistance. The chief of police or his designee is designated as the enforcing agent of this section. A violation of this section shall be a class three (3) misdemeanor.
(Ord. No. O2014.06, 1-23-14; Ord. No. O2014.19, 4-10-14; Ord. No. O2014.65, 11-13-14)

Sec. 29-25. Use of alleys as thoroughfares.

No person shall use an alley within the city as a thoroughfare except authorized emergency vehicles, property owners, residents, and tenants within the boundaries of their property, performing loading and unloading from their property, or vehicles otherwise authorized by the city. The chief of police or his designee is designated as the enforcing agent of this section. A violation of this section shall be a class three (3) misdemeanor.
(Ord. No. O2014.06, 1-23-14; Ord. No. O2014.65, 11-13-14)

Secs. 29-26—29-35. Reserved.

ARTICLE III. TREES AND LANDSCAPING IN PUBLIC RIGHTS-OF-WAY AND PARKS

Sec. 29-36. Purpose.

It is in the best interests of the city that rules and regulations be adopted for the planting and maintenance of trees and landscaping in the public rights-of-way and parks in the city.
(Code 1967, § 30-8)

Sec. 29-37. Definitions.

For the purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section, unless the context clearly indicates a different meaning:

Public park means any area under the jurisdiction and administration of the city regularly used for recreation or landscaping and not otherwise classified.

Public right-of-way means all that property used as public thoroughfares, and lying between the exterior boundary lines of any area granted to or received by the city by grant, gift, easement, deed, dedication or operation of law for street, alley or walkway purposes. Areas used exclusively for utility purposes are specifically excluded.
(Code 1967, § 30-9)

Sec. 29-38. Enforcement.

The public works director shall be the enforcing authority over all plantings within public rights-of-way and over all plantings in public parks.
(Code 1967, § 30-10; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Sec. 29-39. Specifications.

All planting, landscaping and maintenance of planting and landscaping performed in public rights-of-way and public parks shall be accomplished in accordance with city standard specifications for planting and landscaping which shall be the subject of a resolution of the city council. Trees planted in the rights-of-way, and not in public parks, shall comply with the requirements of the Arizona Department of Water Resources Low Water Using Plant List pursuant to Chapter 5, 5-112A.2 of the Second Management Plan, Second Management Period 1990-2000.
(Code 1967, § 30-11(A); Ord. No. 97.56, 12-11-97)

Sec. 29-40. Supervision of planting, etc.; city to provide necessary forms, regulations.

(a) The public works director shall have general technical and supervisory control of all planting, setting out, location, placement, removal, trimming and care of all trees and shrubs in public parks and public rights-of-way.

(b) The public works director shall be responsible for providing all forms and rules and regulations necessary to carry this article into effect.
(Code 1967, § 30-11(B); Ord. No. 97.56, 12-11-97; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Sec. 29-41. Permits.

No person shall plant, move, remove or replace any tree or shrub in a public right-of-way except by permission of the public works director. This shall not apply to grass and shrubs having a potential growth of less than two (2) feet in height, except that no such low-growing grass or shrubs shall be allowed to grow over or overhang any sidewalk, alley or walkway. Except as set forth in § 29-42, such permission may, within the discretion of the public works director, be orally given.
(Code 1967, § 30-11(C); Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Sec. 29-42. Continuing permits for licensed contractors.

Licensed landscape contractors and utility companies upon written application to and approval by the public works director may be granted continuing permits to perform landscaping, planting, trimming of trees and landscaping maintenance in public rights-of-way without securing written permission for each separate job; however, this shall not relieve such contractors from the responsibility of orally notifying the public works director prior to performing the work, and any work performed by such licensed contractors shall comply with city standard specifications for planting and landscaping. Permission granted to a licensed contractor or utility company shall continue until revoked, and the public works director shall revoke any permit issued under this section for nonconformance with the provisions of this article.
(Code 1967, § 30-11(D); Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Sec. 29-43. Implementation of planting program.

(a) Programs for planting or landscaping may be implemented by personal application to, and approval by, the public works director, or by the improvement district procedure as provided in this section.

(b) Persons interested in planting or landscaping on public rights-of-way shall make application to the public works director who shall review their proposal in accordance with requirements of this article. He shall make any necessary changes or recommendations that may be necessary in the proposal and may grant permission for such planting or landscaping. No planting or landscaping shall be done until permission has been granted except as otherwise provided herein, and where required, a maintenance agreement shall be executed between the public works director and the permittee.

(c) Planting and landscaping may be accomplished by improvement district pursuant to the laws of the state.
(Code 1967, § 30-12; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Sec. 29-44. Responsibility for maintenance.

Unless there is a specific agreement between the property owner and the city relieving the property owner of responsibility, the property owner shall be responsible for the irrigation and maintenance of trees, grass and shrubs planted in public rights-of-way abutting the owner's property. Maintenance of city-authorized plantings in medians and parks shall be the responsibility of the public works department.
(Code 1967, § 30-13; Ord. No. 97.56, 12-11-97)

Sec. 29-45. Designation of types, varieties.

The authority to designate the kind and variety of shrubbery, palms, trees, grass or flowers to be planted shall be vested in the public works director. The owners of property fronting on streets and public rights-of-way may request of the public works director that the shrubbery, palms, trees, grass or flowers to be planted shall be of a certain kind of variety.
(Code 1967, § 30-14; Ord. No. 97.56, 12-11-97; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Sec. 29-46. Prohibited species.

It shall be unlawful to plant eucalyptus (except microtheca, papuana, krusena, formanii, erythrocorys, spathulata and torquata), elm (except ulmus parvifolia), willow, cottonwood or poplar trees in any public right-of-way. The planting and replacement of pollen-producing olive trees (olea europaea) or mulberry trees (morus alba) are also prohibited.
(Code 1967, § 30-15; Ord. No. 2004.42, 1-20-05)

Sec. 29-47. Nuisance tree and shrubs.

(a) Any tree or shrub which overhangs or is within the public right-of-way which in the opinion of the public works director endangers the life, health, safety or property of the public shall be declared a public nuisance and the public works director shall remove or trim such tree or shrub.

(b) Nothing contained in this section shall be deemed to impose any liability upon the city, its officers or employees, or to relieve the owner of any private property from the duty to keep any tree or shrub upon his property under his control in such a condition as to prevent it from constituting a public nuisance.

(c) No specie of tree having a potential growth higher than twenty (20) feet shall be planted directly under any public utility overhead line.
(Code 1967, § 30-16; Ord. No. 97.56, 12-11-97; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Sec. 29-48. Violations; remedies.

Any person violating the provisions of this article shall be notified by the public works director in writing by certified mail, addressee only with return receipt requested, mailed to the violator at his last-known residence address. If any person to whom written notice has been mailed neglects, fails or refuses for more than thirty (30) days after receiving such notice to correct a violation, the public works director shall have authority to take the necessary remedial action and charge the cost thereof to the owner of the property abutting the right-of-way. The public works director shall prepare a verified statement and account of all expenses incurred by the city, or occasioned by or incidental to correcting the violation and file such verified statement and account with the finance and technology director.
(Code 1967, § 30-17; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Sec. 29-49. Creation of lien for unpaid costs of remedial action.

Upon receipt of the verified statement and account as set forth in § 29-48, the finance and technology director shall prepare duplicate copies of a notice of lien and record one copy with the office of the county recorder, and within ten (10) days thereafter serve by certified mail the remaining copy of such notice of lien upon the owner of such property abutting the right-of-way if he can be found within the county. From and after the date of recording such notice of lien with the county recorder all expenses incurred in connection with or incidental to correcting the violation and as fixed and determined by such verified statement and account will serve as a lien upon such property and shall be charged and assessed upon and against such property and shall be collected in the same manner as city improvement district assessments.
(Code 1967, § 30-18; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Secs. 29-50—29-60. Reserved.

ARTICLE IV. SIDEWALK CONSTRUCTION

Sec. 29-61. Council resolution.

(a) The city council may pass a resolution providing for the construction of sidewalks, in which the sidewalks to be constructed shall be briefly described. The resolution shall state the width and location of the sidewalk to be constructed. The resolution shall order and direct that the construction of the sidewalk shall be made by the owners of the abutting property and also that in the event of the failure of the abutting property owners to construct such sidewalks, the city shall do the work and the expense shall be charged to the abutting property owners.

(b) The resolution shall be published in a daily newspaper in five (5) successive issues and the superintendent of streets shall cause to be placed along the line of the proposed improvements a copy of the resolution.
(Code 1967, § 30-22)

Sec. 29-62. Notice to abutting property owners.

In addition to the posting of the copy of the resolution mentioned in the preceding section, the superintendent of streets shall notify the owner of each lot or parcel abutting upon any sidewalks to be constructed of the passage of the resolution and notify them that they shall commence work within thirty (30) days from the date of the notice and that, upon failing to commence such work and complete the same with thirty (30) days, the city will proceed to construct the sidewalk and make the same a lien upon the abutting lot or parcel and have such lien extended as a tax against the property to be collected at the next period at which city taxes may become due and payable.
(Code 1967. § 30-23)

Sec. 29-63. Failure of owner to comply; construction by city; recovery of costs.

(a) It shall be the duty of the owner of any lot or parcel abutting upon any proposed sidewalk to proceed to construct such sidewalk as provided by the terms of the resolution of the city council. Upon the failure of the owner to comply with the resolution and the notice provided in the preceding section, the city shall have the right to construct the sidewalks and assess the costs and expenses thereof to the abutting property owner.

(b) At the time of development of the property adjacent to and abutting such improvements, the city council shall fix, levy and assess the amount to be repaid upon such property and collect the amounts of such improvements as county taxes are collected. All statutes providing for the levy and collection of state and county taxes, including collection of delinquent taxes and sale of property for nonpayment of taxes are applicable to the assessments provided for in this article.
(Code 1967, § 30-24)

Sec. 29-64. Contracts awarded by city.

The city may contract for the construction of any sidewalk. Such contracts shall specify a reasonable time for the completion of the improvement. All work must be done under the direction of the city engineer subject to such rules and regulations relating to the supervision of the work as the city council may order and direct.
(Code 1967, § 30-25)

Secs. 29-65—29-69. Reserved.

ARTICLE V. SITTING OR LYING DOWN ON PUBLIC SIDEWALKS IN THE DOWNTOWN COMMERCIAL DISTRICT

Sec. 29-70. Repealed.
(Ord. No. 98.57, 12-17-98; Ord. No. O2014.65, 11-13-14)

Sec. 29-71. Repealed.
(Ord. No. 98.57, 12-17-98; Ord. No. O2014.65, 11-13-14)

Secs. 29-72—29-79. Reserved.

Chapter 30

SUBDIVISIONS[1]

ARTICLE I. PURPOSE AND DEFINITIONS

Sec. 30-1. Purpose and intent.

(a) The purpose of this chapter is to provide for the orderly growth and harmonious development of the city; to insure adequate traffic circulation through coordinated street, transit, bicycle and pedestrian systems with relation to major thoroughfares, adjoining subdivisions, and public facilities; to achieve individual property lots of reasonable utility and livability; to secure adequate provisions for water supply, drainage, sanitary sewerage, and other health requirements; to insure consideration for adequate sites for schools, recreation areas, and other public facilities; to promote the conveyance of land by accurate legal description and plat; and to provide logical procedures for the achievement of this purpose.

(b) In its interpretation and application, the provisions of this chapter are intended to provide a common ground of understanding and a sound and equitable working relationship between public and private interests to the end that both independent and mutual objectives can be achieved in the subdivision of land.
(Ord. No. 99.21, 8-12-99)

Sec. 30-2. Definitions.

For the purpose of this chapter, certain words, terms and phrases are defined as follows:

Bicycle facilities means bike paths, bike lanes, lighting facilities, bike racks, bike lockers and all other necessary equipment and facilities to safely operate bicycles.

Block means a piece or parcel of land or group of lots entirely surrounded by public rights-of-way, streams, railroads or parks, or a combination thereof.

Commission means the City of Tempe development review commission, as defined in the Zoning and Development Code, Section 1-312.

Conditional approval means an affirmative action by the commission or the council indicating that approval will be forthcoming upon satisfaction of certain specified stipulations.

[1]**Editor's note**—Chapter 30 was rewritten and renumbered in its entirety (Ord. No. 99.21). Prior ordinances were Ord. No. 381, 10-25-62; Ord. No. 584, 11-20-69; Ord. No. 97.20, 4-10-97)

Council means the "city council" of the City of Tempe.

Department means the "community development department" of the City of Tempe.

Engineering design criteria means that criteria adopted by the council in Resolution No. 99.47, as amended from time to time.

Engineering plans means plans, profiles, cross-sections, and other required details for the construction or public improvements, prepared by an engineer, registered in the State of Arizona, in accordance with the approved preliminary plat and in compliance with standards of design and construction approved by the council.

Exception means any parcel of land which is within the boundaries of the subdivision but which is not owned by the subdivider.

Final approval means approval of the final plat by the council, as evidenced by certification on the plat by the mayor of the city, constitutes authorization to record a plat.

General plan means a comprehensive plan, or parts thereof, providing for the future growth and improvement of the City of Tempe and for the general location and coordination of streets and highways, schools and recreation areas, public building sites, and other physical development, which shall have been duly adopted by the city council.

Irrigation facilities includes canals, laterals, ditches, conduits, gates, pumps, and allied equipment necessary for the supply, delivery, and drainage of irrigation water and the construction, operation and maintenance of such.

Land splits means the division of improved or unimproved land whose area is two and one-half (2-1/2) acres or less into two (2) or three (3) tracts or parcels of land for the purpose of sale or lease or as defined in A.R.S. § 9-463.

Lot means a piece or parcel of land separated from other pieces or parcels by description, as in a subdivision or on a record survey map, or by metes and bounds, for purposes of sale, lease, or financing.

Corner lot means a lot abutting on two (2) or more intersecting streets where the interior angle of intersection does not exceed one hundred thirty-five degrees (135°).

Interior lot means a lot having but one side abutting on a street.

Key lot means an interior lot, one side of which is contiguous, or separated only by an alley, to the rear line of a corner lot.

Through lot means a lot abutting two (2) parallel or approximately parallel streets.

Lot width means the width of a lot shall be:

(1) If the side property lines are parallel, the shortest distance between these side lines.

(2) If the side property lines are not parallel, the width of the lot shall be the length of a line at right angles to the axis of the lot at a distance equal to the required front or rear building setback line, whichever is the lesser, for the district in which the lot is located. The axis of a lot shall be a line joining the midpoints of the front and rear property lines.

Multi-use path means a paved concrete pathway physically separated from on-street motorized vehicular traffic by an open space or barrier (e.g. landscaping) and designated for the exclusive use by non-motorized traffic, as shown in City of Tempe Standard Details.

Pedestrian way means a public walk dedicated entirely through a block from street to street or providing access to a school, park, transit stop, multi-use path, recreation area or shopping center.

Plat means a map of a subdivision.

(1) *Preliminary plat* means a preliminary map, including supporting data, indicating a proposed subdivision development.

(2) *Final plat* means a map of all or part of a subdivision providing substantial conformance to an approved preliminary plat, prepared by a registered land surveyor.

(3) *Recorded plat* means a final plat bearing all of the certificates of approval required in § 30-13 (10) of this code and duly recorded in the Maricopa County Recorder's office.

Preliminary approval means approval of the preliminary plat by the commission or council and constitutes authorization to proceed with final engineering plans and final plat preparation.

Public improvement standards means a set of regulations setting forth the details, specifications, and instructions to be followed in the planning, design, and construction of certain public improvements in the city, formulated by the city engineer, the county health department and other city departments and as approved by the council.

Subdivider means those persons or entities as defined by A.R.S. § 9-463, as it may be amended from time to time.

Subdivision means improved or unimproved land or lands divided for the purpose of financing, sale or lease, whether immediate or future, into four (4) or more lots, tracts or parcels of land, or, if a new street is involved, any such property which is divided into two (2) or more lots, tracts or parcels of land, or, any such property, the boundaries of which have been fixed by a recorded plat, which is divided into more than two (2) parts. "Subdivision" also includes any condominium, cooperative, community apartment, townhouse or similar project containing four (4) or more parcels, in which an undivided interest in the land is coupled with the right of exclusive occupancy of any unit located thereon, but plats of such projects need not show the buildings or the manner in which the buildings or airspace above the property shown on the plat are to be divided or as defined in A.R.S. § 9-463.02, as it may be amended from time to time.

Transit facilities means bus bays, transit stops, transit shelters and furniture, transit dedicated lanes, railroad tracks, rights-of-way, easements and other allied equipment necessary for the safe operation of the transit system and well being of passengers.

Utilities means installations or facilities, underground or overhead, furnishing for the use of the public: electricity, gas, steam, communications, water, drainage, sewage disposal, or flood control, owned and operated by any person, firm, corporation, municipal department, or board, duly authorized by state or municipal regulations.
(Ord. No. 99.21, 8-12-99; Ord. No. 2004.42, 1-20-05; Ord. No. 2006.01, 1-5-06; Ord. No. 2010.02, 2-4-10)

Secs. 30-3—30-9. Reserved.

ARTICLE II. PLATTING PROCEDURES AND REQUIREMENTS

Sec. 30-10. Outline of procedures.

The preparation, submittal, review, and approval of all subdivision plats located inside the limits of the city shall proceed through the following progressive stages:

(1) Stage I - pre-application conference.

(2) Stage II - preliminary plat.

(3) Stage III - final plat.

(Ord. No. 99.21, 8-12-99)

Sec. 30-11. Stage I - pre-application conference.

(a) The pre-application conference stage of subdivision planning comprises an investigatory period which precedes actual preparation of preliminary plans by the subdivider. During this stage, the subdivider makes known his intentions to the department and is advised of specific public objectives related to the subject tract and other details regarding platting procedures and requirements.

(b) During this stage, it may be determined that a change in zoning would be required for the subject tract or a part thereof, and in such case the subdivider shall initiate the necessary rezoning application.

(c) In carrying out the purposes of the pre-application stage, the subdivider and the department shall be responsible for the following actions:

(1) *Actions by the subdivider*. The subdivider shall meet informally with the department to present a general outline of his proposal, including but not limited to:

a. Sketch plans and ideas regarding land use, street and lot arrangement, tentative lot sizes.

b. Tentative proposals regarding water supply, sewage disposal, surface drainage and street improvements.

(2) *Actions by the department*. The department will discuss the proposal with the subdivider, provide advice of procedural steps, design and improvement standards, and general plat requirements. Then, depending upon the scope of the proposed development, the department will proceed with the following investigations:

a. Check existing zoning of the tract and make recommendations if a zoning change is necessary or desirable.

b. Determine the adequacy of existing or proposed schools, parks and other public spaces.

c. Inspect the site or otherwise determine its relationship to major streets, transit services, bicycle and pedestrian facilities, utility systems, and adjacent land uses and to determine any unusual problems such as topography, utilities, flooding, etc.

(Ord. No. 99.21, 8-12-99)

Sec. 30-12. Stage II - preliminary plat.

The preliminary plat stage of land subdivision includes detailed subdivision planning, submittal, review and approval of the preliminary plat. To avoid delay in processing his application, the subdivider should carefully provide the department with all information essential to determine the character and general acceptability of the proposed development as set forth below:

(1) *Zoning.* The subdivision shall be designed to meet the specific requirements for the zoning district within which it is located. However, in the event that an amendment or variance of zoning is necessary, said action shall be initiated by the property owner or his authorized agent. Any zoning change required in relation to the preliminary plat shall have been adopted prior to or concurrent with preliminary plat approval.

(2) *Sanitary sewerage and water supply*. As a prerequisite of preliminary plat review by the department, the subdivider shall have informed the county health department and the city engineering department of his tentative plans and learned the general requirements for sewage disposal and water supply as applied to his location.

(3) *Preliminary plat submission.* Preliminary plat submission shall include the following:

a. Sixteen (16) copies of the preliminary plat and required supporting data, prepared in accordance with requirements set forth in § 30-12 (7)—(12) and § 30-20—30-26 of this code, shall be filed with the department at least thirty (30) days prior to the commission meeting at which the subdivider desires to be heard. Copies of the preliminary plat shall be reproduced in the form of blueline or blackline prints on a white background and other reproductions as required by the department. Scheduling of the case for commission hearing shall be dependent upon adequacy of data presented and completion of processing.

b. The submittal shall be checked by the department for completeness and assigned a case number; if incomplete as to those requirements set forth in § 30-12 (7)—(12), the submittal shall be rejected and the subdivider notified.

c. Fees for processing applications shall be required and payable in such sums as the city council may from time to time establish by resolution.

(4) *Preliminary plat review*. Preliminary plat review shall be processed as follows:

a. On receipt of the preliminary plat, the department shall perform its review for compliance to public objectives, giving special attention to design principles and standards as set forth in Article III of this chapter, streets and thoroughfares, transit, bicycle and pedestrian facilities, neighborhood circulation, utility methods and systems, existing and proposed zoning and land use of the tract and its environs, and land required for schools, parks and other public facilities.

b. The department shall distribute copies of the plat to the following reviewing offices:

1. Adjacent governmental jurisdictions where land abuts or is in close proximity to said jurisdiction.

2. Director of public works and city engineer for review of drainage and flood control measures; proposed street system; traffic, transit, bicycle and pedestrian plans and facilities; water and sewage disposal proposals; street plans and compliance with city road standards; and for tentative determination of street and drainage improvement and maintenance requirements.

3. Community services department for recommendations regarding parks and recreation spaces.

4. Police chief and fire medical rescue department chief for review of features of proposed development relating to their respective areas of operation.

5. County health department for review of water and sewage disposal proposals.

6. Superintendent of the appropriate school district for his information.

7. Where the land abuts a state highway, to the Arizona department of transportation for recommendations regarding right-of-way and intersection design.

8. To affected utility companies for recommendations.

(5) *Preliminary plat approval*. Preliminary plat approval shall be processed as follows:

a. If the plat is generally acceptable but requires minor revision before proceeding with preparation of the final plat, the commission shall find conditional approval, the required revisions being noted in the meeting minutes. At the direction of the commission, the plat maybe given preliminary approval by the department when it has been satisfactorily revised in accordance with the stated conditions and reviewed by the department.

b. If the commission finds that the plat requires major revision, the case shall be held over pending revision, resubmittal, processing and rescheduling for hearing.

c. If a plat is rejected, the new filing of a plat for the same tract, or any part thereof, shall follow the aforementioned procedure and be subject to the required fee.

(6) *Significance of preliminary approval.* Preliminary approval constitutes authorization for the subdivider to proceed with preparation of the final plat and the engineering plans and specifications for public improvements. Preliminary approval is based upon the following terms:

a. The basic conditions under which preliminary approval of the preliminary plat is granted will not be changed prior to expiration date.

b. Approval is valid for a period of twelve (12) months from date of commission or council approval, whichever is later.

c. Subdivider may request council approval of the preliminary plan within twelve (12) months from date of commission action.

d. Preliminary approval, in itself, does not assure final acceptance of streets for dedication or continuation of existing zoning requirements for the tract or its environs.

(7) *Information required for preliminary plat submittal and form of presentation.* The information hereinafter required as part of the preliminary plat submittal shall be shown graphically or by note on plans, or by letter, and may comprise several sheets showing various elements of required data. All mapped data for the same plat shall be drawn at the same standard engineering scale, said scale having not more than one hundred (100) feet to the inch. Whenever practical, scales shall be adjusted to produce an overall drawing measuring twenty-four (24) inches x thirty-six (36) inches.

(8) *Identification and descriptive data.* Identification and descriptive data shall include the following:

a. Proposed name of subdivision and its location by section, township, and range; reference by dimension and bearing to a section corner or quarter-section corner.

b. Name, address and phone number of subdivider.

c. Name, address and phone number of the person preparing plat.

d. Scale, north point and date of preparation including dates of any subsequent revisions.

e. A location map which shall show a title, scale, appropriate streets and north arrow.

(9) *Existing conditions data*. Existing conditions and data shall include the following:

a. Topography by contours related to USGS survey datum, or other datum required by the city engineer, shown on the same map as the proposed subdivision layout. Contour interval shall be such as to adequately reflect the character and drainage of the land.

b. Location of water wells, streams, canals, irrigation laterals, private ditches, washes, special flood hazard areas, lakes, or other water features; direction of flow; location and extent of areas subject to inundation whether such inundation be frequent, periodic or occasional.

c. Location, widths, and names of all platted streets, alleys, railroads, utility right-of-way of public record, public areas, permanent structures to remain including water wells and municipal corporation lines within or adjacent to the tract.

d. By note, the existing zoning classification of the subject tract and adjacent tracts.

e. By note, the acreage of the tract.

f. Boundaries of the tract to be subdivided shall be fully dimensioned.

(10) *Proposed conditions data*. Proposed conditions data shall include the following:

a. Street layout, including location, width, and proposed names of public streets, alleys, walkways, multi-use paths, transit facilities, bicycle facilities, pedestrian facilities, easements and connections to adjoining platted tract.

b. Typical lot dimensions (scaled), dimensions of all corner lots and lots of curvilinear sections of streets, each lot numbered individually, total number of lots.

c. Location, width and use of easements.

d. Designation of all land to be dedicated or reserved for public use with use indicated.

e. If plat includes land for which multi-family, commercial, or industrial use is proposed, such areas shall be clearly designated together with existing zoning classification and status of zoning change, if any.

(11) *Proposed utility methods*. Proposed utility methods shall include the following:

a. *Sewage disposal*. It shall be the responsibility of the subdivider to furnish the county health department such evidence as that department may require to its satisfaction as to design and operation of sanitary sewer facilities proposed. A

statement as to the type of facilities proposed shall appear on the preliminary plat.

b. *Water supply*. Evidence of adequate volume and quality satisfactory to the county health department and substantiated by letter from that department.

c. *Storm water disposal*. Preliminary calculations and layout of proposed system and locations of outlets, subject to approval of the city engineer.

(12) *Engineering design criteria*. All data shall conform to the City of Tempe, public works department, division of engineering, "engineering design criteria" manual.

(Ord. No. 99.21, 8-12-99; Ord. No. 2001.17, 7-26-01; Ord. No. 2006.25, 4-6-06; Ord. No. 2010.02, 2-4-10; Ord. No. O2014.14, 3-20-14)

Sec. 30-13. Stage III - final plat.

This stage includes the final design of the subdivision, engineering of public improvements, and submittal of the plat and plans by the subdivider for review and for action by the council as set forth below:

(1) *Zoning.* Zoning of the tract shall permit the proposed use, and any zoning amendment necessary shall have been adopted by the council prior to filing of the final plat.

(2) *Easements*. It shall be the responsibility of the subdivider to provide on the final plat such easements in such locations and width as required for utility purposes. Prior to filing the final plat, he shall have submitted the plat to the person(s) authorized to perform plat review for the utility interests.

(3) *Final plat preparation.* The final plat shall be prepared in accordance with requirements set forth in § 30-13 (7)—(10) of these regulations and shall conform closely to the approved preliminary plat.

(4) *Final plat submission.* The subdivider shall file with the department the final plat and eight (8) true copies thereof and other reproductions as required by the department, together with a letter of transmittal and recordation fee, at least twenty-one (21) days prior to the commission or council meeting at which the case will be heard.

(5) *Final plat review*. Final plat review shall be processed as follows:

a. The department, upon receipt of the final plat submittal, shall immediately record receipt and date of filing and check it for completeness. If incomplete, the date of filing shall be voided, and the submittal shall be returned to the subdivider. If complete, the department shall review the plat for substantial conformity to the approved preliminary plat and refer copies of the submittal to the following reviewing offices who shall make known their recommendations in writing:

1. Director of public works and city engineer.

2. Community services department, when applicable.

3. Arizona department of transportation, where the plat abuts a state highway.

4. County health department.

b. The department shall assemble the recommendations of the various reviewing offices, prepare a concise summary of recommendations, and submit said summary together with the reviewer's recommendations to the council. In the event that the department finds that the final plat does not conform to the preliminary plat as approved by the commission or council, then the final plat shall be submitted to the commission for review and recommendations prior to submittal to the council.

(6) *Final plat approval*. If the council finds approval of the plat, the clerk shall transcribe a certificate of approval upon the plat, first making sure that the other required certifications (see § 30-13 (10) a, b, c, d and e) have been duly signed, and that engineering plans have been approved by the city engineer. When the certificate of approval by the council has been transcribed on the plat, the department shall record the approved final plat in the office of the county recorder of Maricopa County and cause copies of the recorded plat to be provided for the city engineer and the community development director, all at the expense of the subdivider.

(7) *Required final plan information*. The following information is required for final plan submittal and method and medium of presentation:

a. The record plat shall be drawn on plastic or other non-shrinking material on a sheet measuring twenty-four (24) inches x thirty-six (36) inches. The plan shall be drawn to a scale of one hundred (100) feet to the inch from an accurate survey. In certain unusual instances, for example where the area to be subdivided is of unusual size or shape, the department may permit a variation in the scale of the final plan. If more than two (2) sheets are required for the drafting of the final plan, an index sheet of the same dimensions shall be filed, showing the entire subdivision on one sheet and the portion thereof contained on each of the other sheets.

b. Copies of the record plat shall be reproduced in the form of blueline or blackline prints on a white background.

(8) *Identification, survey and descriptive data*. All identification, survey and descriptive data required on final plats shall conform to the City of Tempe, public works department, division of engineering, "engineering design criteria" manual.

(9) *Dedication and acknowledgment*. Statement of dedication of all streets, alleys, walkways, bikeways, multi-use paths, transit facilities, drainageways, pedestrian ways, and other easements for public use by the person holding title of record and by persons holding title as vendees under land contract. If lands dedicated are mortgaged, the mortgagee shall also sign the plat. Dedication shall include a written

location by section, township, and range of the tract. If the plat contains private streets, public utility easements shall be dedicated on the plat. Execution of dedication shall be acknowledged and certified by a notary public.

(10) *Required certifications*. The following are required certifications:

a. Certification by the registered land surveyor making the plat that the plat is correct and accurate, and that the monuments described in it have been located as described.

b. Certificate of plat approval by the community development department.

c. Certificate of plat approval by the city engineer.

d. Certificate of plat approval by the city council.

e. Certificate of recordation by the county recorder.

(Ord. No. 99.21, 8-12-99; Ord. No. 2001.17, 7-26-01; Ord. No. 2006.25, 4-6-06; Ord. No. 2010.02, 2-4-10)

Secs. 30-14—30-19. Reserved.

ARTICLE III. SUBDIVISION DESIGN PRINCIPLES AND STANDARDS

Sec. 30-20. General.

(a) Every subdivision shall conform to the requirements and objectives of the general plan, or any parts thereof, as adopted by the commission and the city council, to the Zoning and Development Code and to other ordinances and regulations of the city, and to the Arizona Revised Statutes.

(b) Where the tract to be subdivided contains all or any part of the site of a park, school, flood control facility, or other public area as shown on the general plan or as recommended by the commission, such site should be dedicated to the public or reserved for acquisition by the public within a specified period of time. An agreement should be reached between the subdivider and the appropriate public agency regarding time, method and cost of such acquisition. In the event the commission determines that such an agreement has not been reached within a reasonable period of time, then the commission may make a determination that the requirements of this section have been met.

(c) Land which is subject to periodic flooding, land which cannot be properly drained, or other land which, in the opinion of the city, is unsuitable for any use shall not be subdivided; except that the city may approve subdivision of such land upon receipt of evidence from the city engineer that the construction of specific improvements can be expected to render the land suitable; thereafter, construction upon such land shall be prohibited until the specified improvements have been planned and construction guaranteed.
(Ord. No. 99.21, 8-12-99; Ord. No. 2004.42, 1-20-05)

Sec. 30-21. Street location and arrangement.

(a) Whenever a tract to be subdivided embraces any part of a street designated in an adopted city streets and highways plan, such street shall be platted in conformance therewith.

(b) Street layout shall provide for the continuation of such streets as the city may designate.

(c) Certain proposed streets, as designated by the city, shall be extended to the tract boundary to provide future connection with adjoining unplatted lands.

(d) Local streets shall be so arranged as to discourage their use by through traffic.

(e) Where a proposed subdivision abuts or contains an existing or proposed arterial route, the city may require marginal access streets or reverse frontage with non-access easements along the arterial route, or such other treatment as may be justified for protection of residential properties from the nuisance and hazard of high volume traffic, and to preserve the traffic function of the arterial route.

(f) Streets shall be so arranged in relation to existing topography as to produce desirable lots of maximum utility and streets of reasonable gradient, and to facilitate adequate drainage.

(g) Half-streets shall be discouraged except where necessary to complete a street pattern already begun, or to insure reasonable development of a number of adjoining parcels. Where there exists a platted half-street abutting the tract to be subdivided, and said half-street furnishes the sole access to residential lots, the remaining half shall be platted within the tract.
(Ord. No. 99.21, 8-12-99)

Sec. 30-22. Street and block design.

All street and block design shall conform to the City of Tempe, public works department, division of engineering, "engineering design criteria" manual.
(Ord. No. 99.21, 8-12-99)

Sec. 30-23. Pedestrian ways and multi-use paths.

Pedestrian ways and multi-use paths may be required where essential for circulation, or access to schools, playgrounds, shopping centers, transportation, and other community facilities. Pedestrian ways and multi-use paths may be used for utility purposes.
(Ord. No. 99.21, 8-12-99)

Sec. 30-24. Lot planning.

(a) Lot width, depth, and area shall comply with the minimum requirements of the Zoning and Development Code and shall be appropriate for the location and character of development proposed, and for the type and extent of street and utility improvements being installed. In general, urban density of three (3) or more lots per gross acre must have urban street and utility improvements. "Urban improvements" is interpreted to mean paved and curbed streets, sidewalks, local storm drainage system, public water supply, and, wherever reasonably possible, public sanitary sewerage.

(b) Where steep topography, unusual soil conditions, or drainage problems exist or prevail, the commission may recommend special lot width, depth, and area requirements which exceed the minimum requirements of the particular zoning district.

(c) Lot depths shall conform to zoning ordinance standards.

(d) Side lot lines shall be substantially at right angles or radial to street lines, except where other treatment may be justified in the opinion of the city.

(e) Every lot shall abut upon a public street or furnish satisfactory access thereto.

(f) Single-family residential lots extending through the block and having frontage on two (2) parallel streets shall not be permitted; backing of lots to thoroughfares shall be prohibited except where expressly permitted by this chapter or where justified in the opinion of the city.
(Ord. No. 99.21, 8-12-99; Ord. No. 2004.42, 1-20-05)

Sec. 30-25. Easement planning.

(a) *Utility easements*. Easements for utilities shall be provided along side lot lines, three (3) feet on each side of lot lines for distribution facilities.

(b) *Utility easements on curvilinear streets.* For lots facing on curvilinear streets, utility easements or alleys may consist of a series of straight lines with points of deflection not less than one hundred twenty (120) feet apart. Points of deflection should always occur at the junction of side and rear lot lines on the side of the exterior angle. Curvilinear easements or alleys may be provided, providing that the minimum radius for the alley or easement shall be not less than eight hundred (800) feet.

(c) *Drainage easements.* Where a stream or important surface drainage course abuts or crosses the tract, dedication of a public drainage easement of a width sufficient to permit widening, deepening, relocating, or protecting said water course shall be required.

(d) *Lot areas.* Land within a public street or drain easement or land within a utility easement for major power transmission (tower) lines or pipelines shall not be considered a part of the minimum required lot area except where lots exceed one-half (1/2) acre in area. This shall not be construed as applicable to land involved in utility easements for distribution or service purposes.

(e) *Bus bay and shelter easements.* All lots at far side of arterial to arterial and arterial to collector intersections shall provide bus bay and shelter easements as shown in the City of Tempe Standard Details.

(f) *Multi-use path easements.* All lots abutting multi-use corridors as designated by the most recent update of the Tempe bikeway plan and map shall provide easements as shown in the City of Tempe Standard Details.
(Ord. No. 99.21, 8-12-99)

Sec. 30-26. Street naming.

Subdivider may propose the street names subject to approval by the city engineer at the preliminary plat stage.
(Ord. No. 99.21, 8-12-99)

Secs. 30-27—30-29. Reserved.

ARTICLE IV. STREET AND UTILITY IMPROVEMENT REQUIREMENTS

Sec. 30-30. Purpose.

It is the purpose of this article to establish the minimum acceptable standards for improvement of public streets and utilities, to define the responsibility of the subdivider in the planning, construction, and financing of public improvements, and to establish procedures for review and approval of engineering plans.
(Ord. No. 99.21, 8-12-99)

Sec. 30-31. Engineering plans.

(a) Engineering plans shall be submitted for all improvements required in streets, alleys or easements required as a condition to plat approval and shall be the responsibility of the subdivider; provided, however, that this requirement may be met by participation in an improvement district approved by the city.

(b) It shall be the responsibility of the subdivider to have prepared by an engineer, registered in the State of Arizona, a complete set of engineering plans, satisfactory to the city engineer, for construction of required improvements. Such plans shall be based on the approved preliminary plat and be prepared in conjunction with the final plat. Engineering plans shall be approved by the city engineer prior to recordation of final plat.
(Ord. No. 99.21, 8-12-99)

Sec. 30-32. Construction and inspection.

(a) All relocation, tiling, and reconstruction of irrigation facilities shall be constructed to standards of the owning utility and the city engineer.

(b) All improvements in the public right-of-way shall be constructed under the inspection and approval of the city department having jurisdiction. Construction shall not be commenced until a permit has been issued for such construction, and if work has been discontinued for any reason, it shall not be recontinued until after notifying in advance the department having jurisdiction.

(c) All underground utilities to be installed in street shall be constructed prior to the surfacing of such street. Service stubs to platted lots within the subdivision for underground utilities shall be placed to such length as not to necessitate disturbance of street improvements when service connections are made.

Sec. 30-33. Required improvements.

(a) *Streets and alleys*. All streets and alleys within the subdivision shall be graded and surfaced to cross-sections, grades, and standards approved by the city engineer. Where there are existing streets adjacent to the subdivision, subdivision streets shall be improved to the intercepting paving line of such existing streets. Dead-end streets serving more than four (4) lots shall be provided a graded and surfaced temporary turning circle.

(b) *Curbs.* Where streets are to be paved, concrete curb, curb and gutter, or valley gutter as designated by the city engineer shall be installed in accordance with approved city standards.

(c) *Sidewalks*. Sidewalks shall normally be required on both sides of streets and shall be constructed with materials and a width, line, and grade approved by the city engineer in accordance with approved city standards.

(d) *Streets name signs.* Signs shall be placed at all street intersections and be in place by the time the street pavement is ready for use. Specifications for design, construction, location, and installation shall be in accordance with approved city standards.

(e) *Storm drainage*. Proper and adequate provision shall be made for disposal of storm waters; this shall apply equally to grading of private properties and to public streets. Existing major water courses shall be maintained and dedicated as drainage ways. The type, extent, location, and capacity of drainage facilities shall be determined for the individual subdivision by the city engineer and shall be constructed in accordance with approved city standards.

(f) *Sanitary sewage disposal*. Sewage disposal facilities shall be installed to serve each lot and be subject to the following standards and approvals:

(1) Individual systems may be constructed only in areas not reasonably accessible to a public sewer system, and then only when the following conditions are met to the satisfaction of the county health department.

a. Soil absorptivity is adequate.

b. Construction complies with approved standards.

c. Location of septic tank and seepage pits or leach lines or disposal beds in relation to property lines and buildings, and water supply wells and lines are acceptable. Location shall be such that efficient and economical connection can be made to a future public sewer.

(2) Public sanitary sewers shall be installed in areas which are reasonably accessible to an existing sewer system and shall be constructed to plans, profiles, and specifications approved by the county health department and city departments having jurisdiction.

(3) In areas where public sanitary sewers are not reasonably accessible but where the future owning agency agrees to effect temporary disposal of sewage, the subdivider shall plan and construct sewers within and for the subdivision for connection with a future public system.

(g) *Water supply*. Each lot shall be supplied with safe, pure, and potable water in sufficient volume and pressure for domestic use and fire protection, in accordance with city standards.

(h) *Irrigation facilities*. All irrigation facilities to remain within the boundaries of the tract or in an abutting one-half (1/2) street or alley right-of-way shall be tiled in accordance with standards of the owning agency and relocated or abandoned as directed by the city engineer and the owning agency. Where street improvement requires relocation of control gates or other structures, such relocation and reconstruction shall conform to city engineer and owning agency requirements.

(i) *Monuments*. Permanent monuments shall be installed in accordance with current city standards at all corners, angle points, and points of curve and at all street intersections. After all improvements have been installed, a registered land surveyor or engineer shall check the location of monuments and certify their accuracy.

(j) *Lot corners*. Iron pipe shall be set at all corners, angle points, and points of curve for each lot within the subdivision prior to the recording of the plat.

(k) *Underground utility lines*. All utility lines shall be placed underground. The requirement for underground electrical lines shall not apply to feeder lines from the substation to the subdivision.
(Ord. No. 99.21, 8-12-99)

Secs. 30-34—30-39. Reserved.

ARTICLE V. LAND SPLITS

Sec. 30-40. Land splits.

No person, firm, corporation or other legal entity shall divide land within the city into land splits unless there is endorsed upon the document which creates such land splits the approval of the community development director or his designee and such land splits shall not result in any violation of this code or the Zoning and Development Code of the city. The community development director may require a site plan showing the development potential of the parcel.
(Ord. No. 99.21, 8-12-99; Ord. No. 2001.17, 7-26-01; Ord. No. 2004.42, 1-20-05; Ord. No. 2010.02, 2-4-10)

Sec. 30-41. Boundary adjustments.

(a) A boundary adjustment to a lot within a recorded subdivision plat may be heard by the city council upon the filing of a preliminary/final plat if such amendment does not meet the definition of subdivision as defined herein.

(b) Any other boundary adjustment to a lease line or property line between adjoining parcels shall meet the requirements of § 30-40.
(Ord. No. 99.21, 8-12-99)

Sec. 30-42. Appeals.

The denial or approval of a land split may be appealed to the city council in writing within ten (10) days of issuance of the denial or approval.
(Ord. No. 99.21, 8-12-99)

Secs. 30-43—30-49. Reserved

ARTICLE VI. VARIANCES, VIOLATIONS AND PENALTIES

Sec. 30-50. Variances.

(a) Where, in the opinion of the council, there exist extraordinary conditions of topography, land ownership, or adjacent development, other circumstances not provided for in these regulations, the council may vary the requirements of this chapter in such manner and to such extent as it may deem appropriate to the public interest.

(b) In the case of a plan and program for a complete community or a complete neighborhood, the council may vary these requirements in such manner as appears necessary and desirable to provide adequate space and improvements for the circulation, recreation, light, air, and service needs of the tract when fully developed and populated, and may provide legal provisions as will assure conformity to and achievement of the plan.

(c) In varying the standards or requirements of these provisions, as outlined above, the council may make such additional requirements as appear necessary, in its judgment, to secure substantially the objectives of the standards or requirements so modified.
(Ord. No. 99.21, 8-12-99)

Sec. 30-51. Prohibition.

No person, firm, corporation, or other legal entity shall hereafter sell or offer for sale any lot, piece, or parcel of land which is within a subdivision as defined in § 30-2 of this chapter without first having recorded a plat thereof in accordance with the provisions of this chapter.
(Ord. No. 99.21, 8-12-99)

Sec. 30-52. Violations and penalties.

Any person, firm, corporation, or other legal entity who violates any provision of this chapter shall be guilty of a misdemeanor, as set forth in §1-7 of this code. Each day that a violation is permitted to exist may constitute a separate offense. The imposition of any sentence shall not exempt the offender from compliance with the requirements of these regulations.
(Ord. No. 99.21, 8-12-99)

Chapter 31

SWIMMING POOLS[1]

ARTICLE I. IN GENERAL

Secs. 31-1—31-15. Reserved.

ARTICLE II. OUTDOOR SWIMMING POOLS[2]

Sec. 31-16. Repealed.
(Ord. No. 86.74, § 1, 12-11-86; Ord. No. 2005.89, 12-1-05)

Sec. 31-17. Repealed
(Ord. No. 86.74, § 1, 12-11-86; Ord. No. 2005.89, 12-1-05)

Sec. 31-18. Repealed.
(Ord. No. 86.74, § 1, 12-11-86; Ord. No. 2005.89, 12-1-05)

Sec. 31-19. Repealed.
(Ord. No. 86.74, § 1, 12-11-86; Ord. No. 2005.89, 12-1-05)

Sec. 31-20. Repealed.
(Ord. No. 86.74, § 1, 12-11-86; Ord. No. 97.20, 4-10-97; Ord. No. 2001.17, 7-26-01; Ord. No. 2005.89, 12-1-05)

Sec. 31-21. Repealed.
(Ord. No. 86.74, § 1, 12-11-86; Ord. No. 2005.89, 12-1-05)

[1]**Cross references—**Plumbing code, § 8-600 et seq.; water and sewer extension to newly developed areas, § 25-81 et seq.; Sewers and sewage disposal, Ch. 27.

[2]**Editor's note—**Ordinance No. 2005.89 repealed this chapter in its entirely and its provisions have been incorporated into Ch. 8, Buildings and building regulations.

Chapter 31A

TELECOMMUNICATIONS SERVICE PROVIDERS

ARTICLE I. PURPOSE, FINDINGS AND DEFINITIONS

Sec. 31A-1. Purpose and findings.

(a) The purpose of this chapter is to establish a policy governing the management of public highways for the provision of telecommunications services to enable the city to:

(1) Issue licenses and franchises to telecommunications corporations who use the public highways to provide telecommunications services on a competitively neutral and nondiscriminatory basis, except in cases where state law forbids establishment of a license or franchise requirement;

(2) Manage the public highways in order to minimize the impact and cost to Tempe citizens of the placement of telecommunications facilities within public highways;

(3) Manage the public highways so as to maximize their efficient use, thereby minimizing the foreclosure of future additional uses of such rights-of-way; and

(4) Minimize congestion, inconvenience, visual impact, and other adverse effects on the city's public highways.

(b) Therefore, in this chapter the city council intends:

(1) To ensure that locally elected officials manage local public highways consistent with their fiduciary trust obligations;

(2) To ensure compliance with public health, safety and welfare measures for public highways;

(3) To encourage public-private partnerships to provide telecommunications facilities needed for the most cost-effective delivery of public services, including schools, libraries, police and fire protection, as well as private services;

(4) To conserve the limited physical capacity of the public highways held in public trust by the city; and

(5) To assure that the city's current and ongoing costs of granting and regulating private access to and use of the public highways are fully paid by the persons seeking such access and causing such costs.

(Ord. No. 97.69, 12-11-97; Ord. No. 99.14, 6-10-99)

Sec. 31A-2. Definitions.

For the purpose of this chapter, unless the context otherwise requires, the following terms, phrases, words and their derivatives shall have the meanings given herein.

Cable services and *cable system* shall have the same meaning as defined in Chapter 10 of the Tempe City Code.

Commercial mobile radio service means two (2) way voice commercial mobile radio service as defined by the Federal Communications Commission in 47 U.S.C. § 157.

Facilities means the plant, equipment and property used in the provision of telecommunications services and not owned by the city, including but not limited to poles, wires, pipe, conduits, pedestals, antenna and other appurtenances placed in, on or under public highways.

Provider means a telecommunications corporation who constructs, installs, operates or maintains telecommunications facilities in the city public highways.

Public highway or *highway* means all roads, streets and alleys and all other dedicated public rights-of-way and public utility easements of the city.

Rights-of-way shall have the same meaning as public highway or highway.

Telecommunications means the transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received. The term does not include commercial mobile radio services, pay phone services, interstate services or cable services.

Telecommunications corporation means any public service corporation to the extent that it provides telecommunications services in this state.

Telecommunications services means the offering of telecommunications for a fee directly to the public, or to such users as to be effectively available directly to the public, regardless of the facilities used.

(Ord. No. 97.69, 12-11-97; Ord. No. 99.14, 6-10-99)

Secs. 31A-3—31A-9. Reserved.

ARTICLE II. LICENSE OR FRANCHISE TO OCCUPY RIGHTS-OF-WAY

Sec. 31A-10. License or franchise required.

(a) No telecommunications corporation shall install, maintain, construct or operate telecommunications facilities in any public highway in the city unless a license to use the highways to provide telecommunications services has first been granted by the city council under this chapter or a franchise awarded by the electorate under Article XIII of the Arizona Constitution and this chapter to such telecommunications corporation.

(b) Notwithstanding subsection (a), any telecommunications corporation that was providing telecommunications service within the State of Arizona as of October 31, 1997, pursuant to a grant made to it or its lawful predecessors prior to the effective date of the Arizona Constitution, may continue to provide telecommunications services pursuant to that state grant, until and unless the state grant is lawfully repealed, revoked or amended, and need not obtain any further authorization from the city to provide telecommunication services; provided, however, that such entity must in all other respects comply with the requirements applicable to telecommunications corporations, as provided in Title 9, Chapter 5, Article 7, Arizona Revised Statutes.

(c) Nothing in this chapter shall be deemed to affect the terms or conditions of any franchise, license or permit issued by the city prior to the effective date of the amendments to this chapter, or to release any party from its obligations thereunder. Those franchises, licenses or permits shall remain fully enforceable in accordance with their terms. The city manager, with the consent of the city council, may enter into agreements with franchise holders, licensees or permittees to modify or terminate an existing franchise, license or agreement.

(d) A license or franchise to any telecommunications corporation to use the highways to install, maintain, construct or operate telecommunications facilities under this chapter shall not authorize the use of the highways to provide any other service; nor shall the issuance of the same invalidate any franchise, license or permit that authorizes the use of the highways for such other service; nor shall the fact that an entity holds a franchise, license or permit to make any other use of the highway or to provide any other service authorize installation, maintenance, construction or operation of telecommunications facilities in any highway in the city without obtaining a license or franchise hereunder.

(e) Any license or franchise granted shall not be exclusive.

(f) A telecommunications licensee may enter into contracts for use of its facilities within the public highways to provide telecommunication services. Persons using such licensee's facilities must themselves obtain a telecommunication license if such person constructs, installs, operates or maintains telecommunication facilities within the public highway of the city. If the persons using such licensee's facilities do not construct, install, operate or maintain telecommunication facilities within the public highway of the city, such persons need not obtain a separate license but the telecommunications licensee must disclose the identity of such persons to the city.

(Ord. No. 97.69, 12-11-97; Ord. No. 99.14, 6-10-99)

Sec. 31A-11. License or franchise application.

(a) A telecommunications corporation desiring a license or franchise under this chapter to construct, install, operate and maintain telecommunication facilities in streets and other highways in the city shall file an application with the public works director requesting at the applicant's election, either a license or a franchise, in the form prescribed by the public works department, and shall pay a fee determined by the public works department. The amount of the fee shall be reasonably related to the cost directly incurred by the city to process the application and can be appealed to the city council.

(b) Each application shall, at a minimum, include the following information:

(1) Show where the facilities the applicant will use will be located, or contain such other information as the city may deem necessary in order to ensure that the applicant will comply with requirements for use of the highways;

(2) Identify the applicant, its name, address and telephone number;

(3) Contain a description of the services to be provided; and

(4) Set out a description of any agreement with any other entity that would permit such entity to use the facilities.

(c) Upon receiving an application for a franchise or license that satisfies the conditions of subsection (b), the city shall promptly proffer a telecommunications franchise or license to the applicant for its review, and may inquire into matters relevant to the issuance of the license or franchise. If the applicant agrees to the terms and conditions of the franchise or license, and otherwise satisfies the conditions set forth herein, the request shall be submitted to city council with a recommendation for approval (in the case of a license) or scheduled for a franchise election (in the case of an application for a franchise). Notwithstanding the foregoing, the city need not issue or renew a license, or schedule a franchise election if the applicant has previously had its telecommunications services license or franchise revoked, or for any other reason permitted under Arizona law.
(Ord. No. 97.69, 12-11-97; Ord. No. 99.14, 6-10-99; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Sec. 31A-12. License terms.

(a) *Length of license.* Any license granted by the city pursuant to this chapter shall commence upon adoption of the license and acceptance of the license by the provider. The license shall be effective for a period determined by the city council, but not to exceed five (5) years, and subject to the conditions and restrictions provided in the instrument and this chapter.

(b) *License or franchise agreement*. As a condition of issuing or renewing a license or franchise to use the public highways to construct, install, operate and maintain telecommunication facilities, the city may require the applicant to:

(1) Show proof of receipt of a certificate of public convenience and necessity from the Arizona Corporation Commission;

(2) Agree to comply with highway use requirements that the city may establish from time to time;

(3) Agree to provide and maintain accurate maps showing the location of all the facilities it will use in the highways within the city, and to comply with such other mapping requirements as the city may establish from time to time;

(4) Obtain the insurance, and provide proof of insurance as required by the city; post the performance bonds and security fund required by the city; and agree to fully indemnify the city, its officers, agents, boards and commissions, in a form satisfactory to the city; and agree that it shall have no recourse whatsoever against the city or its officials, boards, commissions, agents or employees for any loss, costs, expense or damages arising out of any provision or requirement of expense or damages arising out of any provision or requirement of the city because of the enforcement of the license or franchise or because of defects in this chapter or the license or franchise issued;

(5) Agree to comply with and be bound by the administrative and enforcement provisions as may be prescribed from time to time by the city. Every franchise or license shall be subject to the following administrative and enforcement provisions:

a. Franchises and licenses shall be personal to the franchisee or licensee. Except as provided in the license or franchise, no transfer of a franchise, franchisee, licensor or licensee, or change of control over the same (including, but not limited to, transfer by forced or voluntary sale, merger, consolidation, receivership, or any other means) shall occur unless prior application is made to the city and the city's prior written consent is obtained, which consent will not be unreasonably withheld or delayed. In making a determination as to whether to approve a transfer, the city may consider the same information and qualifications required of an original application for a license or franchise; whether the licensee or franchisee is in compliance with its license or franchise and this chapter and, if not, the proposed transferee's commitment to cure such noncompliance; whether the transfer would result in an evasion of other applicable provisions of law, or impair lawful contracts; and the effect of the transfer on the city's interests. No application for a transfer of a license or franchise shall be granted unless the proposed transferee agrees in writing that it will abide by and accept all terms of this chapter and the license or franchise, and that it will assume all obligations, liabilities, and responsibility for all acts and omissions, known and unknown, of the previous licensee or franchisee under this chapter and the license or franchise for all purposes, including renewal. Approval by the city of a transfer of a license or franchise does not constitute a waiver or release of any of the rights of the city under this chapter or the franchise or license, whether arising before or after the date of the transfer;

b. Every franchisee or licensee shall be subject to the city's exercise or such police, regulatory and other powers as it now has or may later obtain, and a franchise or license may not waive the application of the same;

c. Penalties for violation of franchise or license;

d. Damages for violation of the franchise or license terms. Any remedies available to the city are cumulative, and are not limited by the recovery of any amounts pursuant to the insurance provisions of the license or franchise, or pursuant to any indemnity clause;

e. A requirement that if the franchisee or licensee fails to pay amounts owed to the city by the time prescribed for payment, the franchisee or licensee shall pay interest on the amounts owed, at the rate of one percent (1%) per month; and

f. A requirement that franchisee or licensee shall produce books and records for the city's inspection and copying, prepare reports, respond to questions and permit the city to have access to its facilities as the city may request in order to determine whether licensee or franchisee has complied with its obligations under the franchise or license, or other applicable law; and

(6) A licensee that receives a telecommunications service license pursuant to this chapter may apply for a renewal of its license, which renewal shall be reviewed in accordance with the requirement of state law.

(c) *No warranty*. The issuance of a license, permit or other authorization by the city is not a representation or warranty that such license, permit, or authorization is a legally sufficient substitute for a franchise, and is not a representation of warranty that a franchise is not required. (Ord. No. 97.69, 12-11-97; Ord. No. 99.14, 6-10-99)

Sec. 31A-13. Limited licenses authorized.

The city council may issue limited, non-exclusive licenses under the following circumstances:

(1) *De minimus license.* The city council may issue a limited license to authorize placement of interstate fiber-optic telecommunications facilities within city rights-of-way in the event the facilities do not exceed ten (10) lineal miles in total length of installation and connect only to interstate telecommunication carrier points of presence, and to no other connection within the city. Said license shall provide for quarterly payments to the city of a right-of-way occupancy fee for each lineal foot of installation on the bases of fair market value and cost, as determined by the city council at the time of the granting of the license and adjusted periodically thereafter at the city's discretion. The license may also contain such additional terms and conditions as the city council may approve consistent with the purposes and findings in this chapter and applicable law;

(2) *Transitting traffic license*. The city council may issue a limited license to authorize use of the city's rights-of-way solely for the purpose of providing telecommunications service where no sale or exchange of service originates or terminates in the city. Said license shall provide for quarterly payments to the city of a right-of-way occupancy fee for each lineal foot of installation on the bases of fair market value and cost, as determined by the city council at the time of the granting of the license and adjusted periodically thereafter at the discretion of the city. The license may also contain such other terms and conditions as the city council may approve consistent with the purposes and findings in this chapter and applicable law; or

(3) *Wireless facilities license.* The city council may issue a limited license to authorize the installation, operation or maintenance of wireless telecommunication facilities, such as antennas, within the city's rights-of-way. Said license shall provide for quarterly payments to the city of a right-of-way occupancy fee for each site or installation on the bases of fair market value and cost, as determined by the city council at the time of the granting of the license and adjusted periodically thereafter at the discretion of the city. The license may contain such other terms and conditions as the city council may approve consistent with the purposes and findings in this chapter and applicable law.

(Ord. No. 97.69, 12-11-97)

Sec. 31A-14. Right-of-way permit.

The public works director shall not issue a right-of-way construction permit or other authorization for a provider to construct or install telecommunications facilities in the city's rights of way unless the provider has first obtained the license or franchise required to occupy the city's rights-of-way under this chapter.

(Ord. No. 97.69, 12-11-97; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Secs. 31A-15—31A-19. Reserved.

ARTICLE III. RENTAL FEES FOR USE OF PUBLIC RIGHTS-OF-WAY

Sec. 31A-20. Repealed.
(Ord. No. 97.69, 12-11-97; Ord. No. 99.14, 6-10-99)

Sec. 31A-21. Compensation.

(a) The city shall not levy a tax, rent, fee or charge to a telecommunications corporation for the use of a public highway to provide telecommunications services, or levy a tax, fee or charge upon the privilege of engaging in the business of providing telecommunications services, except that, in connection with its provisions of telecommunications services and its use of the highways to provide the same, each telecommunications corporation shall:

(1) Pay a transaction privilege tax on the business of providing telecommunications services or applicable use tax, as may be specified from time to time in the Tempe City Code;

(2) Pay public highway construction permit fees established from time to time by the city; and

(3) Pay all reasonable costs associated with the construction, maintenance and operation of its facilities in the public highways used to provide telecommunications services, including reasonable costs associated with damage caused to the public highways.

(b) The public works director is authorized to review the costs associated with construction, maintenance and operation of facilities in the public highways to provide telecommunications services and to establish any fee required to recover those costs.

(c) Nothing in this section is intended to limit the obligation of any person to pay amounts owed under any franchise or license. Provided that, for franchises or licenses issued after the effective date of this chapter, payments required under such franchise or license for the provision of telecommunications services shall comply with the provisions of A.R.S. § 9-581.
(Ord. No. 97.69, 12-11-97; Ord. No. 99.14, 6-10-99; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Secs. 31A-22—31A-29. Reserved.

ARTICLE IV. LOCATION AND RELOCATION OF FACILITIES IN RIGHTS-OF-WAY

Sec. 31A-30. Registration.

(a) Providers using or planning to use the city's rights-of-way must register with the city on a form prescribed by the city and must include the following information:

(1) The provider's name, address and telephone number;

(2) A description of the services provided and to be provided;

(3) A description of the facilities used or to be provided by provider; and

(4) A description of the location of the facilities.

(b) A provider shall file a proposed amendment to the registration before it makes any change that would render the registration information incomplete or inaccurate. A change of the provider's name or address must be filed at least sixty (60) days prior to the date the change becomes effective; a change in the telephone number must be filed ten (10) days before the change becomes effective; in the case of change in facilities (by addition, subtraction or modification or movement) the change in facilities must be filed at least sixty (60) days before work commences on the facilities unless the relocation was ordered by the city. In the case of a change in services, the change must be noticed thirty (30) days before the earlier of the date the service commences, or provider begins marketing the service.
(Ord. No. 97.69, 12-11-97)

Sec. 31A-31. Location and relocation of facilities in rights-of-way.

(a) Each provider is responsible for ensuring that its facilities are installed, constructed and maintained in strict accordance with the city code; that all required licenses, franchises and permits are applied for and obtained before any work commences; and that the terms and conditions thereof are strictly followed. Where a facility has more than one provider, each provider is fully responsible for ensuring that all requirements are satisfied. Facilities shall be installed, constructed and maintained so that no additional costs are imposed upon the city, and so that the facility does not interfere with other uses or users of the public rights-of-way. Without limiting the requirement of any other provision of the city code, or the provisions of any license, permit or franchise issued by the city, this shall require, at a minimum, compliance with the provisions of this chapter.

(b) The facilities to be constructed, installed, operated and maintained by the provider shall be so located or relocated as to interfere as little as possible with traffic or other authorized uses over, under or through the rights-of-way. Those phases of construction relating to traffic control, backfilling, compaction and paving, as well as the location or relocation of said facilities shall be subject to regulation by the city council.

(c) The provider shall keep accurate installation records of the location of all facilities in the rights-of-way and furnish them to the city upon request or at such periodic intervals as the city may require. Upon completion of new or relocation construction of underground facilities in the rights-of-way, the provider shall provide the city, if requested or as required, with installation records in a format compatible with the then-current city mapping format showing the location of the underground and above ground facilities.

(d) Whenever the provider shall cause any opening or alteration whatever to be made for any purpose in any rights-of-way, the work shall be completed within the time specified in the license, permit or franchise, or if no time is specified then within a reasonable time. In addition, the provider shall, without expense to the city and upon the completion of such work, restore the property disturbed in a manner consistent with the city's duly adopted standards, or as required by its permits, licenses or franchises.

(e) The installation, use and maintenance of the provider's facilities within the rights-of-way authorized herein shall be in such a manner as not to interfere with the city's placement, construction, use and maintenance of its rights-of-way, street lighting, water pipes, drains, sewers, traffic signal systems or other city systems that have been, or may be, installed, maintained, used or authorized by the city. Upon the city's request, provider's facilities will be relocated at provider's expense, unless state law expressly requires otherwise. Upon the city's request, by a time specified by the city, if the provider fails to move its facilities, the city may do so and will bill the provider the costs therefor and the provider shall pay those costs within thirty (30) days after its receipt of the invoice therefor. Further, the provider shall reimburse the city any additional cost the city incurs due to the location or relocation of the provider's facilities, including all design and construction costs.

(f) The provider shall not install, maintain or use any of its facilities in such a manner as to damage or interfere with facilities of another located within the rights-of-way of the city.

(g) All facilities shall be installed per plans approved by the city. If the provider makes use of existing conduit of another provider, the provider shall be subject to the provisions of this chapter in the use of such conduit in the rights-of-way.

(h) Each provider must obtain and maintain such insurance, bonding and security fund requirements as specified by the city, or if no specific requirements are designated, as are required by the city for similar facilities. No work shall commence unless these requirements have been satisfied, and the city may require the provider to remove or stop work on facilities, or require a provider to cease using the facility, when any insurance, bonding or security fund requirements are not satisfied.

(i) A permit shall be obtained from the public works department prior to a provider removing, abandoning, relocating or reconstructing, if necessary, any portion of a provider's facilities. Notwithstanding the foregoing, the city understands and acknowledges there may be instances when a provider is required to make repairs, in compliance with federal or state laws, that are of an emergency nature. The provider will notify the city prior to such repairs, if practicable, and will obtain the necessary permits in a reasonable time after notification.
(Ord. No. 97.69, 12-11-97)

Sec. 31A-32. Conflict with city projects.

(a) If, during the design process for public improvements, the city discovers a potential conflict with proposed construction, the provider shall either:

(1) Locate and, if necessary, expose its facilities in conflict; or

(2) Use a location service under contract with the city to locate or expose its facilities. The provider shall reimburse the city for the cost resulting from the use of such location service.

(b) The city shall make reasonable efforts to design and construct projects pursuant to this section so as to avoid relocation expense to the provider. Provider shall furnish location information to the city in a timely manner, but in no case longer than fifteen (15) calendar days from the date of the city's request.

(c) The city reserves the prior and superior right to lay, construct, erect, install, use, operate, repair, replace, remove, relocate, regrade, widen, realign or maintain any rights-of-way, aerial, surface or subsurface improvements, including, but not limited to, water mains, traffic control conduits, cable and devices, sanitary or storm sewers, subways, tunnels, bridges, viaducts or any other public construction within the rights-of-way of the city.

(d) When the city invokes its prior superior right to the rights-of-way, the provider shall move its facilities located in the rights-of-way, at its own cost, to such a location as the city directs.

(e) If, during the course of a project, the city determines provider's facilities are in conflict, the following shall apply:

(1) Prior to city notice to proceed to contractor, the provider shall, within a reasonable time, but in no event exceeding one month, remove or relocate the conflicting facility. This time period shall begin running upon receipt by the provider of written notice from the city. However, if both the city and the provider agree, the time frame may be extended based on the requirements of the project; or

(2) Subsequent to city notice to proceed to contractor, the city and the provider will immediately begin the coordination necessary to remove or relocate the facility. Actual construction of such removal or relocation is to begin no later than seventy-two (72) hours, if practicable, after written notification from the city of the conflict.

(Ord. No. 97.69, 12-11-97)

Sec. 31A-33. Damage to city rights-of-way and facilities.

(a) If, in the installation, use, or maintenance of its facilities, the provider damages or disturbs the surface or subsurface of any rights-of-way or adjoining public property, or the public improvement located thereon, therein or thereunder, the provider shall promptly, at its own expense, and in a manner acceptable to the city, restore the surface or subsurface of the rights-of-way or public property, or repair or replace the public improvement thereon, therein or thereunder, in as good a condition as before such damage or disturbance. If such restoration, repair or replacement of the surface, subsurface or any structure located thereon, therein or thereunder is not completed within a reasonable time, or such repair or replacement does not meet duly adopted standards, the city shall have the right to perform the necessary restoration, repair or replacement, either through its own forces, or through a hired contractor, and the provider shall pay the city for its expenses in so doing within thirty (30) days after its receipt of the invoice therefor.

(b) The provider shall reimburse the city for all costs arising from the reduction in the service life of any public road or pavement damage, to the extent required by any other city chapters, resulting from pavement cuts of the provider. The provider shall pay such costs within thirty (30) days from the date of issuance of an invoice from the city.
(Ord. No. 97.69, 12-11-97)

Sec. 31A-34. Relocation of facilities.

(a) The city shall not bear any cost of relocating existing facilities, irrespective of the function served, where city facilities or other facilities occupying the rights-of-way under authority of a city permit, license or franchise which must be relocated, are already located in the rights-of-way and the conflict between the provider's potential facilities and the existing facilities can only be resolved expeditiously as determined by the city by the movement of the existing city or other approved facilities.

(b) If provider's relocation effort so delays construction of a public project causing the city to be liable for delay damages, the provider shall reimburse the city for those damages attributable to the delay created by the provider. If the provider should dispute the amount of damages attributable to the provider, the matter shall be referred to the dispute resolution board. The dispute resolution board shall consist of one member selected by the city, one member selected by the provider, and a third person agreed upon by both parties. The person agreed upon by both parties shall be chairperson of the dispute resolution board. Expenses for the dispute resolution board shall be shared equally by the city and the provider. The board will hear the dispute promptly, and render an opinion as soon as possible, but in no case later than sixty (60) days after notification by the city of provider's allocated share of damages suffered by the city. All decisions of the dispute resolution board are non-binding on either the city or the provider, however, the findings of the dispute resolution board shall be admissible in any legal action. The city and the provider shall accept or reject findings of the dispute resolution board within thirty (30) days after receipt of the findings. If damages are assessed by the dispute resolution board, the provider shall pay the city within thirty (30) days of receipt of an invoice. Late charges of five percent (5%) and interest charges of one and one-half percent (1-1/2%) per month shall be added for late payment.

(c) Except as otherwise provided in a license, franchise, or permit, or by other provision of law, the entire cost of relocation shall be borne by the city if the provider is required by the city to relocate facilities which are located in private easements obtained by the provider prior to the dedication of the public street or easement from which the facilities must be relocated. These prior rights of the provider would also be unaffected by any subsequent relocation. A prior rights as used in this subsection, means private easement rights obtained by the provider prior to the dedication of the streets or public ways from which the facilities are requested by the city to be relocated. In the case of a facility that serves multiple purposes, the prior rights must extend to all uses for this exception to apply.
(Ord. No. 97.69, 12-11-97)

Secs. 31A-35—31A-39. Reserved.

ARTICLE V. GENERAL PROVISIONS

Sec. 31A-40. Rights reserved to city.

Without limiting the rights that the city might otherwise have, the city does hereby expressly reserve the following rights, powers and authorities:

(1) To exercise its governmental powers now or hereafter to the full extent that such powers may be vested in or granted to the city;

(2) To determine any question of fact relating to the meaning, terms, obligations or other aspects of this chapter and the instruments issued under this chapter; and

(3) To grant multiple, nonexclusive licenses, franchises, licenses or permits within the city to other persons.

(Ord. No. 97.69, 12-11-97)

Sec. 31A-41. City police power; continuing jurisdiction.

(a) Every provider shall be subject to the city's exercise of such police, regulatory and other powers as the city now has or may later obtain, and a provider may not waive the application of the same, and must be exercised in strict conformity therewith. Every license shall be subject to revocation if the provider fails to comply with the terms and conditions of the license or applicable law. A license shall not be revoked unless the provider is given written notice of the defect in performance and fails to cure the defect within sixty (60) days of the notice, except where the city finds that the defect in performance is due to intentional misconduct, is a violation of criminal law, or is part of a pattern of violations where the provider has already had notice and opportunity to cure. A hearing shall be held before a license is revoked or not renewed if the provider requests a hearing. In the event of a conflict between this chapter and other provisions of the city code, the stricter requirement shall apply.

(b) The city shall have continuing jurisdiction and supervision over any facilities located within or on city rights-of-way. However, it is recognized that the daily administrative, supervisory and enforcement responsibilities of the provisions of this chapter shall be delegated and entrusted to the city manager or designee to interpret, administer and enforce the provisions of this chapter, and to promulgate standards regarding the construction, reconstruction, relocation, maintenance, dismantling, abandonment or use of the facilities within the city rights-of-way.

(Ord. No. 97.69, 12-11-97; Ord. No. 99.14, 6-10-99)

Sec. 31A-42. Violation.

From and after the effective date of this chapter, it shall be unlawful for any provider to occupy the streets and public rights-of-way unless the provider is in compliance with the provisions of this chapter. The city may pursue any remedy at law, including but not limited to, injunctive relief, civil or criminal trespass, and withholding other city permits and authorizations until the provider complies with this chapter. These remedies are cumulative and may be pursued in the alternative.

(Ord. No. 97.69, 12-11-97)

Chapter 32

TOWING FROM PRIVATE PROPERTY[1]

Sec. 32-1. Definition.

For the purposes of this chapter, "private towing carrier" means any person who commercially offers services to tow, transport, immobilize or impound motor vehicles from private property without the prior permission of the owner or operator of such vehicle by means or use of a truck or other vehicle or device designed for or adopted to that purpose.
(Code 1967, 33A-1; Ord. No. 2009.11, 5-28-09)

Sec. 32-2. Maximum charges and fees; release of vehicles.

(a) No private towing carrier shall hold or attempt to hold any vehicle towed from any location within the city without the consent of the owner or operator thereof as security for accrued towing and storage charges. Any such vehicle shall be immediately released, regardless of impound location, to the owner or operator thereof upon the production of proof of ownership or agency, as hereinafter defined.

(b) For the purposes of subsection (a), proof of ownership or agency shall be deemed proven when the claimant displays an actual or photocopy of a vehicle registration or title, whether current or not, or a current rental or lease agreement for the impounded vehicle and one of the following is provided:

(1) The claimant of the vehicle displays a driver's license or any government piece of photographic identification, whether current or not, issued by any state or other sovereign empowered to issue such a license or identification, such license indicating the same last name as that in which the vehicle is registered; or

(2) The claimant displays any piece of photographic identification issued by any state or other sovereign empowered to issue such a license or identification and the keys to the impounded vehicle.

(c) The private towing carrier, its agents and employees shall allow the claimant immediately upon request to retrieve any of the documentation listed in subsection (b) from the impounded vehicle.

(d) Pursuant to A.R.S. § 9-499.05 and this chapter, private towing carriers within this city shall be subject to such maximum charges and fees as the council shall establish by resolution (see Appendix A) at least every five (5) years. A private towing carrier is subject to such maximum charges and fees and other regulations established in this section if the vehicle being towed, transported, immobilized or impounded is towed from private property located within the corporate limits of this city. No fees other than those specified in Appendix A shall be

[1] **Cross reference**—Motor vehicles and traffic, Ch. 19.
State law reference—Officers authorized to remove illegally stopped vehicles, A.R.S. § 28-872.

permitted.

(e) A private towing carrier may require a claimant to provide a current address and telephone number to assist such private towing carrier's billing and collection process. A private towing carrier shall provide the claimant with information showing the private towing carrier's billing and collection procedures. This document shall contain no promissory note language. No private towing carrier may require as a condition precedent to the release of any vehicle documentation or proof in excess of or different than that described in subsections (b) and (f) of this section.

(f) A private towing carrier may require any claimant to sign a receipt for the vehicle claimed; however, such receipt shall contain no language other than the following:

(1) The name and address of the claimant;

(2) The name, address and letterhead of the private towing carrier;

(3) The date and time at which the vehicle was claimed;

(4) A description, including the license number, of the claimed vehicle; and

(5) A statement of the unpaid balance, if any.

(g) Notwithstanding any of the foregoing provisions, no private towing carrier shall release any vehicle after having been advised by any law enforcement agency that such vehicle has been reported as stolen.

(h) A private towing carrier shall release an impounded vehicle from the location where the claimant is directed by signs, pursuant to § 32-6, to retrieve the vehicle. The vehicle shall be released at (1) the time the towing and impound fee is paid or (2) proof of ownership is provided pursuant to subsection (a). A private towing carrier shall be deemed to be operating business and required to release vehicles if they are towing or impounding vehicles.

(i) The private towing carrier shall post a sign with a minimum one inch lettering with the maximum charges and fees as established by council resolution (see Appendix A) at the main business entry of the impound location.

(j) A private towing carrier shall post signs visible to customers at the location of payment no smaller than twelve (12) inches by eighteen (18) inches at their place of business with the following information:

(1) Tempe City Code Sections 32-1 through 32-10;

(2) A list of specific fees authorized by Tempe City Code, including towing fees, storage fees and any other charges that could result from the disposition of the vehicle; and

(3) Name of private towing carrier, responsible party and business telephone number.

(k) A private towing carrier shall accept credit and debit card payments for all listed fees. There shall be no additional charges for such payment methods.
(Code 1967, § 33A-2; Ord. No. 999.2, § 1, 1-24-85; Ord. No. 2006.77, 1-4-07; Ord. No. 2009.11, 5-28-09)

State law reference—Authority to regulate maximum rates of towing motor vehicles from private property, A.R.S. § 9-499.05.

Sec. 32-3. Repealed.
(Code 1967, § 33A-3; Ord. No. 2006.77, 1-4-07)

Sec. 32-4. Notice to police.

No private towing carrier shall tow, immobilize or transport any vehicle without the express permission of the owner thereof, unless the private towing carrier has notified the city police department prior to towing, immobilizing or transporting the vehicle and provided the following information:

(1) The name and address of the owner of the vehicle, if known;

(2) The vehicle license number, vehicle identification number (VIN) and description;

(3) The reason the vehicle was moved or immobilized without the owner's permission;

(4) The location where the vehicle was immobilized or taken; and

(5) The name and drivers license number of the person that towed or immobilized the vehicle and the name and address of the company that towed, immobilized or transported the vehicle.
(Code 1967, § 33A-4; Ord. No. 2006.77, 1-4-07; Ord. No. 2009.11, 5-28-09)

Sec. 32-5. Authority to tow.

(a) It shall be unlawful for a private towing carrier to tow or transport a motor vehicle from private property or immobilize a vehicle on private property without the permission of the owner or operator of the vehicle unless such private towing carrier receives a request from a law enforcement agency or the express written permission from the owner of the property or the agent of the owner, who has complied with requirements of this section. The owner or the owner’s agent shall either sign each towing order or authorize the tow by a written contract which is valid for a specific length of time not to exceed one year. The private towing carrier may not act as the agent of the owner. A copy of the written contract shall be made readily available to the law enforcement agency upon request and include the owner’s or owner’s agent name and current telephone numbers.

(b) A private towing carrier shall only be authorized to tow or transport a motor vehicle from the tow location to the carrier’s designated lot.
(Code 1967, § 33A-5; Ord. No. 2006.77, 1-4-07; Ord. No. 2009.11, 5-28-09)

Sec. 32-6. Notice to public of right to tow.

(a) The owner or person in possession of any private parking area shall be deemed to have given consent to unrestricted parking by the general public in such parking area unless such parking area is posted with signs as prescribed by this section which are clearly visible and readable from any point within the parking area and at all points of entry. The owner of a subdivision or area containing private streets may prohibit parking on one or both sides of the street if signs as prescribed by this section are posted at each entrance to the subdivision or area and near every intersecting street at a location where the sign is visible and readable upon entry to any such street from the intersecting street. Such signs shall contain, at a minimum, the following information:

(1) Restrictions on parking;

(2) Disposition of vehicles found in violation of parking restrictions;

(3) Maximum cost to the violator, including storage fees and any other charges that could result from the disposition of his vehicle parked in violation of parking restrictions;

(4) Telephone number and address where the violator can retrieve his vehicle; and

(5) Each sign shall state, "Tempe City Code, Section 32-6."

(b) Signs at the entrance of the parking area will be a minimum of twelve (12) inches by eighteen (18) inches in size and will be mounted at a minimum height of three (3) feet and a maximum height of ten (10) feet above the ground. Signs within the parking area will be a minimum of six (6) inches by nine (9) inches in size and must be visible from any location within the parking area. All signs pursuant to this subsection shall consist of a white background with red lettering.

(c) No private towing carrier shall tow a vehicle from a private parking area or immobilize the vehicle unless the signs conform with and are posted as required by this section.

(d) This section shall not apply to any vehicle left in a private parking area for over seventy-two (72) consecutive hours. The owner or person in possession of any private parking area in which a vehicle has been left for over seventy-two (72) consecutive hours shall comply with § 32-4 provisions of this chapter before towing or immobilizing such vehicle.
(Code 1967, § 33A-6; Ord. No. 992.3, 3-28-85; Ord. No. 2006.77, 1-4-07; Ord. No. 2009.11, 5-28-09)

Sec. 32-7. Charging excess fees.

(a) No private towing carrier shall charge any fee or charge in excess of those established by resolution enacted pursuant to this chapter.

(b) Ignorance of the maximum charge or fee established by council resolution shall not be a defense in any prosecution brought under this chapter.

(c) No private towing carrier shall charge for or seek compensation for any service not specifically listed or set forth in a resolution enacted pursuant to this chapter.
(Code 1967, § 33A-7; Ord. No. 2006.77, 1-4-07)

Sec. 32-8. Service calls.

For the purposes of this chapter and of any resolution adopted pursuant to § 32-2, the phrase "service call not resulting in the towing of a vehicle" shall mean any occurrence or set of circumstances wherein the vehicle subject to towing has not been removed from the property upon which such vehicle was unlawfully or improperly parked prior to demand for the release of such vehicle by the owner or operator thereof. If the driver or owner of the vehicle returns prior to the removal of the vehicle from the property, the private tow carrier shall release the vehicle and no fee shall be charged.
(Code 1967, § 3A-9; Ord. No. 2006.77, 1-4-07)

Sec. 32-9. Application of law.

A private towing carrier is subject to the provisions of this chapter if it tows, immobilizes or transports a vehicle within the city limits regardless of the impound location.
(Ord. No. 2009.11, 5-28-09)

Sec. 32-10. Violation; penalties.

Violations of this chapter shall be punishable as set forth in § 1-7 of this code, except for violations of § 32-5, which shall be subject to a minimum civil fine/penalty of two hundred fifty dollars ($250) and a maximum civil fine/penalty of one thousand dollars ($1000).
(Code 1967, § 33A-10; Ord. No. 992.2, § 1, 1-24-85; Ord. No. 2001.17, 7-26-01; Ord. No. 2006.77, 1-4-07; Ord. No. 2009.11, 5-28-09)

Chapter 33

WATER

ARTICLE I. IN GENERAL

Secs. 33-1—33-15. Reserved.

ARTICLE II. DOMESTIC WATER SERVICE[1]

DIVISION 1. GENERALLY

Sec. 33-16. Definitions.

For the purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section; unless the context clearly indicates a different meaning:

Domestic water means water supplied through the pipes of the city's water system.

Unit of service means each separate occupancy, house, store or building so situated upon any lot within the city that the same might be or is now served by the city's water system, or in the opinion of the finance and technology director could be served separately from any other occupancy, residence, house, store or building upon the same lot, irrespective of the number of residences, houses, stores or buildings upon such lot, even though two (2) or more of such occupancies, residences, houses, stores or buildings are held or owned by the same person.
(Code 1967, § 35-1; Ord. No. 2001.17, 7-26-01; Ord. No. 2010, 02, 2-4-10)

[1]**State law references—**Authority of city relative to water service, A.R.S. §§ 9-276(A)(2) and 9-276(B); municipal ownership of water utility, A.R.S. §§ 9-511 and 9-511.01.

Sec. 33-17. Applicability; conditions for service.

(a) Domestic water may be supplied by the city to consumers upon the terms and conditions prescribed in this article, and not otherwise.

(b) The determination of the finance and technology director as to whether any house, occupancy, residence, store or building comes within the meaning of this article so as to require a separate service connection, meter box and turn-off valve shall be final; provided, that the owner or occupant of such premises shall have the right to appeal from such decision to the city council at its next regular meeting. In the event of any such appeal, the determination of the city council shall be final.
(Code 1967, § 35-2; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Sec. 33-18. Applications for service; deposits.

(a) Before the city turns on water to any premises or property, the owner, occupant, renter or lessee shall make application for water service with the office of the finance and technology director. The city may require an occupant, renter, or lessee to provide a lease or other evidence of the right to occupy the premises or property as a part of the application and may require that every adult occupant, renter, or lessee of the premises or property be listed on the water service account as a person who has contracted for the city's water service. Every person contracting for city water shall comply with all provisions of this article. Charges for city water service applications shall be established by city council resolution (see Appendix A).

(b) All consumers, other than property owners as specified in subsection (c), before domestic water shall be furnished to them, shall place a deposit with the finance and technology director sufficient to ensure the payment of water billed to them and to protect the city against loss occasioned by nonpayment of water bills. The minimum deposit shall be established by city council resolution (see Appendix A). The total amount of the deposit shall be determined by the finance and technology director, taking into consideration the nature of the premises to be served, the expected consumption of water, the past payment record, if any, of the consumer and such other information as is necessary to provide an adequate deposit. Such deposit in no event shall exceed an amount equal to the estimate of the average charges against the premises for a period of three (3) consecutive months.

(c) Property owners, upon submitting satisfactory proof of ownership and upon completing and signing an approved application for water service, will not be required to place a deposit at time of application for water service. However, upon failure by the property owner to pay timely for water consumed or other city services received, the finance and technology director may require the placement of a deposit, the amount of such deposit above for consumers other than property owners, before continuation or resumption of city services to the premises.

(d) If the consumer has timely and regularly made payment to the city for water consumed, refuse, garbage and sewer services, the deposit shall be returned to the consumer who paid the deposit at the expiration of thirteen (13) calendar months of such timely and regular performance. Deposits unclaimed after twenty-four (24) months from the date the deposit became refundable are presumed abandoned.
(Code 1967, § 35-3; Ord. No. 624.10A, 2-23-84; Ord. No. 624.11, § I, 1-10-85; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10; Ord. No. O2014.12, 3-20-14)

Sec. 33-19. Turn-off valves.

All water supply pipes to buildings shall be properly supplied by the consumer with a suitable turn-off valve, inside the property line, to ensure against the danger of frost or bursts which may result in property damage. Such turn-off valve shall be kept in good order and shall be under the control of the consumer, whereas the turn-off valve and box on the curb shall be under the control of the city. If domestic water service is turned off by the city for any reason and the service so turned off does not have a turn-off valve installed as required above on the property owner's premises for the turning off of such domestic water, such person shall, prior to the city again turning on such service, install in accordance with the provisions above a proper turn-off valve on such premises.
(Code 1967, § 35-4; Ord. No. O2014.12, 3-20-14)

Sec. 33-20. Branches, extensions, etc.

Whenever a water service enters upon any private property by a route other than within an easement held by the city, and the branches and extensions pass through the bounds of such property for the purpose of furnishing a supply of water to any adjoining private property, the property upon which service first enters shall be charged for the water furnished by any branches, extensions, etc., of the service. If a meter is installed upon such service, the rate for water shall be assessed to the property first named unless such adjoining property owners make written application to the city to install a meter within their property line on the branches, extensions, etc., and give the city written rights of ingress and egress over their property for the purpose of maintaining, repairing and reading such meter, and unless such adjoining property owners have in all respects complied with the provisions of this article. (Code 1967, § 35-5)

Sec. 33-21. Discontinuance of service.

(a) Any person wishing to discontinue the use of domestic water shall give notice thereof at the office of the finance and technology director. When the water is ordered turned off from any premises, all service charges and commodity charges for water supplied to such premises shall be immediately due and payable to the city and the water will not be turned on again until all such charges are paid, except as provided by A.R.S. § 9-511.01(G).

(b) Until the notice of discontinuance and all required payments have been made, the premises shall be deemed occupied by the persons listed on the water service account and those persons' liability continued.

(c) If the persons listed on the water service account have made a deposit with the city, the balance, if any, of such deposit shall be returned to those persons who paid the deposit, after deducting the amount of any money owed on the water service account to the city. Deposits unclaimed after twenty-four (24) months from the date the deposit became refundable are presumed abandoned.

(d) A consumer's water service may be discontinued for nonpayment of a bill for services rendered by the city at a previous location, provided such bill is not paid within twenty (20) days after the unpaid bill has been presented to the consumer at his new location.

(e) The finance and technology director may use the services of a collection agency to collect any past-due amounts owed to the city pursuant to this article.

(f) Every person who shall request of the city that their domestic water be turned off and on for making repairs, etc., to their system shall pay to the finance and technology director a fee for such service in an amount established by city council resolution (see Appendix A).
(Code 1967, § 35-6; Ord. No. 624.11, § I, 1-10-85; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10; Ord. No. O2014.12, 3-20-14)

Sec. 33-22. City not liable for damages.

The city shall not be held liable for any damage that may result from the shutting off or turning on of any water supply pipe or main for any purpose whatever, even should no notice have been given, nor for damages caused by any break or leak in any water pipe inside the curb.
(Code 1967, § 35-7)

Secs. 33-23—33-35. Reserved.

DIVISION 2. METERS AND SERVICE CONNECTIONS

Sec. 33-36. Generally.

The city water mains may be tapped by either city forces or a contractor licensed with the state to perform such work. All bronze service clamps and tapping couplings will be required for tapped connections to asbestos cement pipe.
(Code 1967, § 35-8)

Sec. 33-37. Fees.

Charges for tapping water mains, installing water connections, water meters and water meter boxes shall be established by council resolution (see Appendix A).
(Code 1967, § 35-9; Ord. No. 624.11, § I, 1-10-85; Ord. No. 86.31, § 1, 6-19-86; Ord. No. 92.09, 6-18-92)

Sec. 33-38. Maintenance of meters and connection; right of entry for inspection.

(a) Except as provided in this chapter, the water consumer shall maintain all water lines and connections within this property.

(b) All meters, except in cases where they are wilfully injured by the consumer, shall be maintained and repaired by the city at its expense.

(c) In case any authorized city employee is refused admittance to any premises or being admitted, shall be hindered or prevented from inspecting the water system upon such premises, the finance and technology director may cause the water to be turned off from such premises after giving twenty-four (24) hours' notice to the owner or occupant of such premises of his intention to do so.
(Code 1967, § 35-10; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Sec. 33-39. Accessibility of water meter.

Water meter boxes shall be installed such that the access cover is exposed and not lower than the finished grade. The community development department shall deny final approval and certificate of occupancy of any building until the requirements of this section are complied with.
(Code 1967, § 35-10.1; Ord. No. 97.20, 4-10-97; Ord. No. 2010.02, 2-4-10)

Sec. 33-40. Changes or alterations.

Any person receiving domestic water from the city desiring to make any changes or alterations in the existing water connection shall be required to furnish the finance and technology director a statement of the changes or alterations to be made, and receive the finance and technology director's written permission before any such changes or alterations are made.
(Code 1967, § 35-11; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Sec. 33-41. Multiple services through single meter.

(a) The city may furnish a meter for each unit of service that has a separate tap in the city main, and the city may at its option elect to allow more than one unit of service to be served by a single meter. This permission may be given in any one of the following cases:

(1) Extreme cases which the city has allowed to previously exist;

(2) Apartment houses;

(3) Hotels;

(4) Motels;

(5) Mobile home and trailer developments;

(6) Multiple family dwellings;

(7) Townhouses, condominiums and buildings or dwelling groups containing individual units of individual ownership.

(b) Permission allowing the single-meter service pursuant to subsection (a) shall be contingent upon the following conditions being met:

(1) The person having actual supervision over the units affected shall guarantee to pay for all water used through the meter.

(2) Cash or a certificate of deposit shall be placed in a federally insured financial institution of the consumer's choice in an amount established by city council resolution (see Appendix A). The cash or certificate of deposit shall be deposited with and be negotiable by the finance and technology director in the event of default on any payment to the city. If the consumer has timely and regularly made payment to the city for water consumed, refuse, garbage and sewer service, the cash or certificate of deposit shall be returned to the consumer at the expiration of thirteen (13) calendar months of such faithful performance; except, that the city shall have an option to require the cash or certificate of deposit to remain with the finance and technology director for an additional twelve (12) months. In the event payments for water consumed, refuse, garbage and sewer service shall be thirty (30) days delinquent, the finance and technology director may deduct from the cash deposit or negotiate such certificate of deposit and use the proceeds for such delinquent accounts, returning the balance to the consumer less reasonable charge for discontinuance or resumption of water service.

(3) If the units comprising the premises served by the single meter have multiple ownership, the covenants, conditions and restrictions on the respective units of property deeds shall clearly state that the individual lots or units are jointly and severally liable for any and all delinquent water consumed, refuse, garbage and sewer services received from the city.

(4) Upon default of payment by the consumer for water consumed, or other city services received, the finance and technology director may require the placement of a cash or a certificate of deposit AS A DEPOSIT, the amount of such cash or certificate of deposit shall be established by city council resolution (see Appendix A), before resumption of city services to the premises against which a default or delinquency of city services to the premises exist or to any other premises or property owned by such property owner. If the consumer thereafter makes timely and regular payment to the city for water consumed, refuse, garbage and sewer service, the cash or certificate of deposit shall be returned to the consumer at the expiration of twelve (12) calendar months of such faithful performance; except, that the city shall have the option to require the cash or certification of deposit to remain with the finance and technology director for an additional twelve (12) months. In the event payments for water consumed, refuse, garbage and sewer service shall be thirty (30) days delinquent, the finance and technology director may deduct from the cash deposit or negotiate such certificate of deposit and use the proceeds for such delinquent accounts, returning the balance to the consumer less reasonable charges for discontinuance or resumption of water service.

(Code 1967, § 35-12; Ord. No. 624.11, § I, 1-10-85; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10; Ord. No. O2014.12, 3-20-14)

Sec. 33-42. Testing of meters.

A water customer may request that the city conduct an accuracy test on the customer's water meter. For residential customers, the city shall replace the water meter and test it for accuracy. For nonresidential customers, the city shall conduct a field test and, if further testing is warranted, may replace the water meter and conduct additional testing. If testing demonstrates that the water meter is accurate, based on industry standards, the city shall charge the customer an amount established by city council resolution (see Appendix A).
(Code 1967, § 35-13; Ord. No. 624.11, § I, 1-10-85; Ord. No. O2014.12, 3-20-14)

Sec. 33-43. Defective meters.

When a meter in service less than thirteen (13) months is proven defective, the charge for any month affected shall be equal to an average based upon the charges for the three (3) preceding months or length of service, whichever is lesser. In instances where water service has been supplied for a period in excess of thirteen (13) months, the charge for any month affected shall be equal to an average based upon the charges for that month in the previous year together with one month next preceding and next following the previous year month in question.
(Code 1967, § 35-14)

Sec. 33-44. Tampering with, injuring meters; unlawful possession of equipment or reinstatement of service.

(a) It shall be unlawful for any unauthorized person to knowingly have and keep in his possession or under his control any turn-off valve key or hydrant wrench to the city water supply system and no person shall, without authority from the finance and technology director or the public works director, make, construct, buy, sell or in any way dispose of to any person any turn-off valve key or hydrant wrench for use on the city water supply system.

(b) It shall be unlawful to remove unmetered water from city mains without express approval of the finance and technology director or his designee.

(c) Water meters shall be sealed by the proper city officials in such a manner as to prevent all tampering with or injury to the mechanism thereof, without breaking the seal, and no person shall break or remove a seal, or wilfully injure or destroy a meter.

(d) No person shall destroy, obstruct or injure any meter box; or remove such box except for the purpose of inspecting meter readings; or destroy the lid or cover belonging thereto; or place refuse or debris therein.

(e) No person whose water service has been discontinued shall tamper with city facilities or equipment in an effort to reinstate water service. Any person who tampers with city facilities or equipment, in addition to other penalties provided by laws, shall pay an administrative charge in an amount established by city council resolution (see Appendix A) prior to the city reinstating such water service.
(Code 1967, § 35-15; Ord. No. 624.11, § I, 1-10-85; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10; Ord. No. O2014.12, 3-20-14)

Secs. 33-45—33-55. Reserved.

DIVISION 3. RATES AND CHARGES

Sec. 33-56. Schedules.

The charges, rates, deposits, and fees for providing domestic water service shall be established by city council resolution (see Appendix A).
(Code 1967, § 35-16; Ord. No. 624.10A, 2-23-84; Ord. No. 624.13, 9-26-85; Ord. No. O2014.12, 3-20-14)

Sec. 33-57. When payable; disconnection for delinquent charges; resumption of service.

(a) All flat rates, service charges and charges for metered water used during the previous month shall be due and payable at the office of the finance and technology director when rendered. Payment shall be submitted by the due date printed on the monthly statement or shall be delinquent thereafter. Each person listed on the water service account is jointly and severally responsible for payment of all charges. The finance and technology director may designate certain private establishments as authorized city water payment stations, in the capacity of limited agents, for the purpose of collecting any such charges. These payment stations so designated shall be required to perform pay station functions in accordance with rules and instructions issued by the internal services department and shall be paid a collection fee for the faithful performance of these functions in accordance with a schedule of fees previously authorized by the city council.

(b) If the total bill for any such charges is not paid by the date of delinquency, the water may be shut off from the premises of the delinquent consumer whereupon service shall not be resumed until all charges due plus applicable penalties have been paid. If the consumer necessitates, because of the delinquent status of the consumer's account, a personal call by a water service representative, whether or not service is turned off as a result of the personal call, a customer service charge, established by city council resolution (see Appendix A), shall be assessed to the consumer's account. In addition, the delinquent consumer shall be required to place a deposit in the amount set forth in § 33-18 with the internal services department.

(c) No person other than an official or employee of the city shall turn on water from the city mains without written permission from the finance and technology director or the public works director. A person who tampers with the city mains without written permission shall be assessed a fee as established by city council resolution (see Appendix A).

(d) Should the water be turned on to the premises by anyone except an employee of the department, after it has been turned off at the city's turn-off valve, it may be turned off at the main and shall not be turned on again until a fee established by city council resolution (see Appendix A) has been paid.

(e) Anyone violating this section shall be guilty of a misdemeanor.
(Code 1967, § 35-17; Ord. No. 624.11, § I, 1-10-85; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10; Ord. No. O2014.12, 3-20-14; Ord. No. O2014.27, 6-26-14)

Sec. 33-58. Creation of lien for unpaid charges.

(a) Unless otherwise prohibited by state law, delinquent water charges shall constitute a lien against the property where the services were provided. In order to impress and secure such lien, which shall be at the discretion of the finance and technology director, the following procedure shall be utilized:

(1) The finance and technology director shall give written notice to the owner-of the property within thirty (30) days after the statement is rendered by either personally serving or mailing to such owner, at the owner's last-known address by certified or registered mail, or the address to which the water charges billing was sent. This written notice shall indicate that the city may impress and secure a lien on the subject property unless the owner brings the delinquent bill current within thirty (30) days from service or receipt of the letter, and in addition, pays any penalties that may be due pursuant to § 33-57. The notice shall also contain a statement that the owner may appeal the delinquency to the city council by filing such appeal within the thirty-day time period after receipt of such notice.

(2) If the owner of the property does not bring the delinquency current or successfully prosecute an appeal to the city council within the thirty (30) days from service or receipt of the registered or certified letter, the finance and technology director may prepare duplicate copies of a notice and claim of lien and file one copy with the county recorder and within a reasonable time thereafter service or mail by registered or certified mail the remaining copy with the owner of the property. The notice and claim of lien shall be made under oath by the finance and technology director or his duly authorized representative and shall contain the following:

a. A description of the property sufficient for its identification;

b. The name of the owner of the property; and

c. The amount of the delinquent bill.

(b) From and after the date of its recording in the office of the county recorder, the lien shall attach to the property until paid. A sale of the property to satisfy the lien shall be made upon judgment of foreclosure and order of sale. The city shall have the right to bring an action to enforce the lien in the county superior court at any time after its recording, but failure to enforce the lien by such action shall not affect its validity. The recorded notice and claim of lien shall be prima facie evidence of the truth of all matter recited therein and of the regularity of all proceedings prior to the recording therein.

(c) A prior recording for the purposes provided in this section shall not be a bar to a subsequent recording of a lien for such purposes, and any number of liens on the same lot or tract of land may be enforced in the same action.
(Code 1967, § 35-19; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10; Ord. No. O2014.12, 3-20-14)

Secs. 33-59—33-70. Reserved.

ARTICLE III. WATER FOR IRRIGATION

Sec. 33-71. Definitions.

For the purposes of this article, the following words and phrases shall have the meaning respectively ascribed to them by this section, unless the context clearly indicates a different meaning:

Association means the Salt River Valley Water Users' Association, a corporation.

Kent Decree means the decision and decree dated March 1, 1910, entered by the District Court of the Third Judicial District of the Territory of Arizona, in and for the County of Maricopa, in the case of Patrick T. Hurley, plaintiff, vs. Charles F. Abbott, et al., defendant, being Civil Cause No. 4564, and all supplemental decrees subsequent thereto.

Lot or *tract* means a single parcel of land in one compact body in one owner or under one possession or control.

Turnout means the place at and the gate or structure by which water may be diverted from a ditch or conduit and delivered into the control of the owner or occupant of a lot or tract. The turnout may be either upon or immediately contiguous to the lot or tract or at the intake of the private ditch or conduit under the control or subject to the use of the owner or occupant of the lot or tract.

Water means only that water which may be delivered from time to time by the association to the city for distribution to land to which water has been decreed by the Kent Decree, and which may from time to time be agreed upon between the association and the city council.
(Code 1967, § 35-20)

Sec. 33-72. Applicability.

The only lands to which the provisions of the article shall be applicable are those within the city; and if any lot or tract shall at any time be served directly by the association, then during the time such service shall continue the provisions of this article shall not be applicable to such lot or tract.
(Code 1967, § 35-21)

Sec. 33-73. Application for water service.

Before water will be distributed by the city to any lot or tract under this article, the owner or occupant thereof shall pay an application fee in an amount established by city council resolution (see Appendix A) and execute and file in the office of the finance and technology director an application for water service on a form to be furnished by the finance and technology director.
(Code 1967, § 35-22; Ord. No. 624.11, § I, 1-10-85; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10; Ord. No. O2014.12, 3-20-14)

Sec. 33-74. Charges.

Charges for providing the irrigation service shall be established by council resolution. (See Appendix A).
(Code 1967, § 35-23)

Sec. 33-75. Delinquent charges; discontinuance of service.

Whenever any person has failed to pay the cost of irrigation water in accordance with the provisions of this article, and the same has become delinquent, a notice shall be mailed stating that no irrigation water shall be delivered until the lot owner or person desiring the irrigation service reinstated has paid, in addition to all other charges, an amount established by city council resolution (see Appendix A) for the reinstating of services. Such amount shall be paid to the finance and technology director prior to such time irrigation water service is reinstated.
(Code 1967, § 35-24; Ord. No. 624.11, § I, 1-10-85; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10; Ord. No. O2014.12, 3-20-14)

Sec. 33-76. Conditions for distribution.

(a) Water for any lot or tract under this article will be delivered at the turnout selected by the city, and the city shall be in no way responsible for, and will exercise no control over, such water beyond the turnout. The acceptance of an application by the city shall in no way obligate it to provide the means of the conveyance of the water or the distribution thereof beyond the turnout.

(b) The failure of the owner or user of any ditch or conduit beyond a turnout to keep such ditch or conduit in a suitable condition for the carriage and distribution of water shall be sufficient cause for the city to refuse to distribute or deliver water at such turnout until such ditch or conduit shall be put in a condition acceptable to the city.
(Code 1967, § 35-25)

Sec. 33-77. Manner of use.

Water distributed to any lot or tract under this article shall be used on such lot or tract and not elsewhere; and if any such water is used or permitted to escape outside such property, or if such water is wasted wilfully or by gross carelessness, the application under which such water is being distributed will be cancelled by the city and all rights of the applicant under such application shall thereupon cease and terminate.
(Code 1967, § 35-26)

Sec. 33-78. Breaking valve seal.

No person shall disturb or break the irrigation valve seal after the same has been placed thereon by the city.
(Code 1967, § 35-27)

Secs. 33-79—33-90. Reserved.

ARTICLE IV. WATER DEVELOPMENT FEES

Sec. 33-91. Purpose.

Due to the increasing costs associated with the expansion of the city's water system, it is now necessary to implement a method of direct cost recovery from persons, firms or corporations responsible for new physical development within the city to provide a source of funding for the city's continued capital investment in the system.
(Code 1967, § 35-28)

Sec. 33-92. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Commercial/industrial user means any user or establishment not defined as a dwelling unit.

Detached dwelling unit means any dwelling unit located on its own lot and not sharing a common wall with or not having adjoining walls with another dwelling unit.

Developer means the individual, firm, corporation, partnership, association, syndication, trust or other legal entity that is responsible for new physical development within the city and creating a demand for city water service.

Development means any improvement which creates a demand for city water service.

Dwelling unit means a room or group of rooms within a building containing cooking accommodations. An apartment and a mobile home shall be considered a dwelling unit.

Townhouse means any dwelling unit located on its own lot and sharing a common wall with or having adjoining walls with another dwelling unit.
(Code 1967, § 35-29; Ord. No. 91.14, 4-25-91)

Sec. 33-93. Schedule; exemptions; disposition.

(a) The water development fee to be charged by the city is established by council (see Appendix A).

(b) The fee imposed by this article shall be collected by the community development director, who shall be charged with the administration of this article. The fee for each dwelling unit or, in the case of commercial and industrial construction, the fee for each connection shall be collected by the community development director prior to the issuance of a building permit, and the fee with respect to any mobile home or recreation vehicle space shall be collected prior to the issuance of a construction permit for the development of a mobile home or recreation vehicle park. The community development director shall not issue a building permit or construction permit until the fees required by this article have been paid.

(c) No water development fee will be collected for the installation of fire lines, providing such line is not served by an individual water meter. A tap to the water main for a residential fire sprinkler system may be installed without payment of a water development fee as follows:

(1) An unmetered fire tap of a minimum three-quarter (3/4) inch diameter may be installed to connect a residential fire sprinkler system to the city's water main when fire protection is being added to an existing single-family residence that is already connected to the city's water distribution system;

(2) The city will provide a fire tap to the residential sprinkler system for the fee specified in Appendix A, and will install a copper service line to the resident's property boundary nearest the city's water main;

(3) The resident shall pay all tap fees and inspection fees associated with installing the fire tap to the city's water main;

(4) The resident shall cause an approved backflow prevention device to be installed in conformance with Tempe Standard Detail T-210 on the residential fire service line at the resident's expense;

(5) The resident shall schedule and pay for an annual inspection of the backflow prevention device by a certified backflow tester or inspector, and shall submit the annual inspection report to the public works department backflow prevention staff. The first annual report is due no later than twelve (12) months after installation of the device;

(6) The resident shall own and maintain the entire fire service line from the point of use in their residential fire sprinkler system to the tap on the city's water main;

(7) The resident shall pay a monthly fire service line fee, in the amount specified in Appendix A, to be added to the base charge on the resident's monthly water bill;

(8) No person shall use a fire tap to access water for any purpose that is not a fire emergency. Using a fire tap to access water for any purpose that is not a fire emergency is a violation of this article; and

(9) If a person violates any provision of this article, the public works director may issue a written notice of violation and an order to cease and desist. All violations under this article are subject to a civil penalty in an amount not to exceed one thousand dollars ($1,000) per day of violation.

(d) All revenue received from the water development fee shall be deposited in a utility revenue account to be used for capital expansion and enlargement of the city water system or for the retirement of debt service, both principal and interest, related to water system development.

(e) Multiple water meters used to serve a single service, or a single occupancy building, are not permitted unless approved by the community development director. If multiple meters are approved, the water development fees charged will be equivalent to the fee charged for a single meter installation based on demand requirements.

(f) The fee imposed by this article shall be collected for the remodel, expansion, or reconstruction of an existing detached dwelling unit only if any of the following apply:

(1) The new meter is larger than 1 inch.

(2) The remodel, expansion, or reconstruction creates one or more additional dwelling units.

(Code 1967, § 28-36; Ord. No. 936.6A, 3-15-84; Ord. No. 936.7, 6-6-85; Ord. No. 86.64, 10-9-86; Ord. No. 88.80, 1-26-89; Ord. No. 91.14, 4-25-91; Ord. No. 97.20, 4-10-97; Ord. No. 97.02, 7-10-97; Ord. No. 2000.23, 5-31-00; Ord. No. 2001.17, 7-26-01; Ord. No. 2009.35, 9-10-09; Ord. No. 2010.02, 2-4-10; Ord. No. O2014.25, 6-26-14)

Sec. 33-94. Effective date.

This article shall become effective and have application to all work for which building permits are applied for on or after July 1, 2000.

(Code 1967, § 28-36; Ord. No. 936.6A, 3-15-84; Ord. No. 936.7, 6-6-85; Ord. No. 86.64, 10-9-85; Ord. No. 88.80, 1-26-89; Ord. No. 97.02, 7-10-97; Ord. No. 2000.23, 5-31-00)

Secs. 33-95—33-99. Reserved.

ARTICLE V. CROSS-CONNECTION CONTROL

Sec. 33-100. Purpose.

The purpose of this article is to protect the public water supply of the city from the possibility of contamination or pollution by isolating within the user's system such contaminants or pollutants which could backflow into the public water supply; and to provide for the monitoring and enforcement of a continuing program of backflow prevention which will prevent the contamination or pollution of Tempe's potable water supply.
(Ord. No. 87.57, § 33-100, 1-28-88)

Sec. 33-101. Responsibility.

(a) The public works department (hereinafter called the "department") of the city is invested with the authority and responsibility for the implementation of an effective cross-connection control program and for the enforcement of the provisions of this article and to prevent water from unapproved sources to enter the potable water system. No water service connection to premises of a type specified in this article shall be installed or maintained unless the public water supply is protected as required by this article.

(b) The user shall not allow any pollutants and contaminants to enter the public potable water system from the point of delivery from the public potable water system. The user shall at his own expense install, operate, test and maintain approved backflow prevention assemblies as directed by the department.

(c) The community development department is authorized to enforce the provisions of this article on all new buildings, additions with new services and changes of use of existing buildings where required by § 33-103(c) in accordance with Chapter 8, Article 7, Division 2.
(Ord. No. 87.57, § 33-101, 1-28-88; Ord. No. 95.19, 7-20-95; Ord. No. 97.20, 4-10-97; Ord. No. 2001.17, 7-26-01; Ord. No. 2004.15, 4-29-04; Ord. No. 2010.02, 2-4-10)

Sec. 33-102. Definitions.

The following words and terms, when used in this article, shall have the following definitions, unless the context clearly indicates otherwise:

Approved means accepted by the department as meeting an applicable specification stated or cited in this article, and as suitable for the proposed use.

Auxiliary water supply means any water supply on or available to the premises other than the public potable water supply, including, but not limited to, water from another purveyor's public potable water supply, treated effluent, wastewaters or industrial fluids.

Backflow means the reversal of the normal flow of water caused by either backpressure or backsiphonage.

Backflow prevention assembly means an assembly or means designed to prevent the reversal of the normal flow of water caused by either backpressure or backsiphonage.

(a) *Air gap* means the unobstructed vertical distance through the free atmosphere between the lowest opening from any pipe or faucet supplying water to a tank, plumbing fixture, or other device and the flood level rim of said vessel. An approved air-gap shall be at least double the diameter of the supply pipe, measured vertically, above the overflow rim of the vessel, and in no case less than one inch.

(b) *Reduced pressure principle assembly* means an assembly of two (2) independently acting approved check valves together with a hydraulically operating, mechanically independent differential pressure relief valve located between the check valves and, at the same time, below the first check valve. The unit shall include properly located test cocks and tightly closing shutoff valves at each end of the assembly. The entire assembly shall meet the design and performance specifications as determined by a recognized laboratory and approved by the department for backflow prevention assemblies. To be approved, these assemblies must be readily accessible for in-line testing and maintenance.

(c) *Double check valve assembly* means an assembly of two (2) independently operating approved check valves with tightly closing shutoff valves on each end of the check valves, plus properly located test cocks for the testing of each check valve. The entire assembly shall meet the design and performance specifications as determined by a recognized laboratory and approved by the department for backflow prevention assemblies. To be approved these assemblies must be readily accessible for in-line testing and maintenance.

(d) *Pressure vacuum breaker assembly* means an assembly containing an independently operating loaded check valve and an independently operating loaded air inlet valve located on the discharge side of the check valve. The assembly will be equipped with properly located test cocks and tightly closing shutoff valves located at each end of the assembly.

Backpressure means the flow of water or other liquids, mixtures or substances under pressure into the distribution pipes of a potable water supply system from any source or sources other than the intended source.

Backsiphonage means the flow of water or other liquids, mixtures or substances into the distribution pipes of a potable water supply from any source other than its intended source caused by the reduction of pressure in the potable water supply system.

Contamination (high hazard) means an impairment of the quality of the potable water by sewage, industrial fluids or waste liquids, compounds or other materials to a degree which creates an actual or potential hazard to the public health through poisoning or through the spread of disease.

Cross-connection means any physical connection or arrangement of piping or fixtures between two (2) otherwise separate piping systems, one of which contains potable water and the other nonpotable water or industrial fluids through which, or because of which, backflow may occur into the potable water system. This would include any temporary connections, such as swing connections, removable sections, four-way plug valves, spools, dummy section of pipe, swivel or change-over devices or sliding multiport tube.

Pollution (low hazard) means the presence of any foreign substance (organic, inorganic or biological) in the water which tends to degrade its quality so as to constitute a hazard or impair the usefulness or quality of the water to a degree which does not create an actual hazard to the public health but which does adversely and unreasonably affect such waters for domestic use.

Tester certified means a person who has completed a minimum of forty (40) hours of training and has passed a written and practical exam as part of a certification or re-certification process. Each person certified to make competent tests or to repair, overhaul and make reports on backflow prevention assemblies shall be conversant with the applicable laws, rules and regulations and have had experience in plumbing or pipe fitting or have other qualifications which are equivalent in the opinion of the department.

Water, nonpotable means water which is not safe for human consumption.

Water, potable means any water which, according to standards recognized by the city, is safe for human consumption.

Water, service connection means the terminal end of the service connection from the public potable water system at its point of delivery to the user's water system. If a meter is installed at the end of the service connection, then the service connection shall mean the downstream end of the meter. Unprotected takeoffs from the service line will not be permitted upstream of any meter or any backflow prevention assembly located at the point of delivery to the user's water system. Service connection shall also include water service connection from a fire hydrant and all other temporary or emergency water service connections from the public potable water system.
(Ord. No. 87.57, § 33-200, 1-28-88; Ord. No. 95.19, 7-20-95; Ord. No. 2004.15, 4-29-04)

Sec. 33-103. Approval.

(a) Backflow prevention assemblies required hereunder shall be approved by the department and shall be installed by and at the expense of the user.

(b) The department may approve backflow assemblies when such assemblies have met the criteria set forth in § 33-106(b) and provided the manufacturer has a local parts and service center.

(c) Assemblies shall be specified and located on the construction plans for all new buildings, additions with new services, and changes of use or occupancy of existing buildings where required by § 33-105. Approval shall be obtained prior to issuance of the building permit. This section does not apply to building permits applied for prior to the effective date of this article except as provided in § 33-110.
(Ord. No. 87.57, § 33-300, 1-28-88; Ord. No. 95.19, 7-20-95; Ord. No. 2004.15, 4-29-04)

Sec. 33-104. Installation of backflow prevention assemblies.

(a) Assemblies shall be installed at the service connection or near the property line but in all cases before the first branch line leading off of the service line, and in an accessible location approved by the department.

(b) Backflow prevention assemblies shall have at least the same cross-sectional area as the water service and or meter. In those instances where a continuous water supply is necessary, two (2) sets of backflow prevention assemblies shall be installed in parallel, if the water supply cannot be temporarily interrupted for the testing of assemblies.

(c) No bypass shall be installed around backflow prevention assemblies.

(d) Double check valve assemblies shall be installed as prescribed in the standard details approved by the department. Copies of the standard details are available from the department. Double check valve assemblies may be installed below ground in a vault, if approved in writing, on a case-by-case basis by the department.

(e) Reduced pressure principle assemblies shall be installed as prescribed in the standard details approved by the department. Copies of the standard details are available from the department. Reduced pressure principle assemblies shall be installed above ground.

(f) All pressure-type backflow prevention assemblies, which are designed for periodic field testing, shall be equipped with resilient seated shut-off valves on both the upstream and the downstream side of the assembly. In addition, resilient seated test cocks shall be provided and located so that test equipment may be connected to the assembly at such points that the pressure in each pressure zone may be detected and, in addition, a test cock shall be located upstream of the upstream shut-off valve as close as possible to the upstream shut-off valve.
(Ord. No. 87.57, § 33-400, 1-28-88; Ord. No. 95.19, 7-20-95; Ord. No. 2004.15, 4-29-04)

Sec. 33-105. Premises or systems requiring approved backflow prevention assemblies.

(a) An approved backflow prevention assembly of the type specified in this section shall be the minimum installation of each service connection (whether from a fire hydrant, temporary regular or other water service connection) to the following type of premises or systems:

	Type of Assembly Required			
Premises Requiring Approved Backflow Prevention Assemblies	*Double Check*	*Reduced Pressure*	*Air Gap*	*Pressure Vacuum Breaker*
Air craft and missile plants		X		
Animal clinics, animal grooming shops		X		
Automotive repair with steam and/or acid cleaning equipment or solvent facilities		X		
Auxiliary water systems (interconnected)		X		
Auxiliary water systems (noninterconnected)	X			

Premises Requiring Approved Backflow Prevention Assemblies	*Type of Assembly Required*			
	Double Check	*Reduced Pressure*	*Air Gap*	*Pressure Vacuum Breaker*
Beverage bottling plant		X		
Breweries		X		
Buildings greater than 3 stories or 34 feet in height (low hazard)	X			
Buildings greater than 3 stories or 34 feet in height (high hazard)		X		
Buildings with booster pumps or potable water storage (low hazard)	X			
Buildings with booster pumps or potable water storage (high hazard)		X		
Canneries, packinghouses and reduction plants		X		
Car wash facilities		X		
Central heating and air conditioning plants		X		
Chemical plants		X		
Chemically treated potable or nonpotable water systems		X		
Civil works (government-owned or operated facilities not open for inspection by the department)		X		
Commercial laundries		X		
Dairies and cold storage plants	X			
Dye works		X		
Film processing labs		X		
Food processing		X		

Premises Requiring Approved Backflow Prevention Assemblies	*Type of Assembly Required*			
	Double Check	*Reduced Pressure*	*Air Gap*	*Pressure Vacuum Breaker*
High schools and colleges		X		
Holding tank disposal stations		X		
Hospitals and mortuaries		X		
Medical and dental buildings		X		
Sanitariums, rest and convalescent homes		X		
Irrigation systems with chemical injection		X		
Irrigation systems (premises having separate systems)		X		
Labs using contaminating materials		X		
Manufacturing, processing and fabricating plants using contaminating materials		X		
Mobile home parks		X		
Motion picture studios		X		
Oil and gas production facilities		X		
Plating plants		X		
Power plants		X		
Radioactive materials processing		X		
Restricted, classified or other closed facilities		X		
Rubber plants		X		
Sand and gravel plants		X		
Sewage and storm drainage facilities		X		
Shopping centers		X		

Premises Requiring Approved Backflow Prevention Assemblies	*Type of Assembly Required*			
	Double Check	*Reduced Pressure*	*Air Gap*	*Pressure Vacuum Breaker*
Water trucks, hydraulic sewer cleaning equipment		X	X	
Any premises where a cross-connection is maintained		X		

(b) Fire protection systems will be required to have the following type of protection:

Premises Requiring Approved Backflow Prevention Assemblies	*Type of Assembly Required*			
	Double Check	*Reduced Pressure*	*Air Gap*	*Pressure Vacuum Breaker*
Direct connection from public water system (noncontaminating)	X			
Direct connection from public water system (contaminating)		X		
With pump and/or storage tank		X		
With auxiliary supply		X		

(c) Any premises where water supplied by the city is subject to deterioration in sanitary quality and there is the potential for its entry into the public water system shall be protected as required by the department.
(Ord. No. 87.57, § 33-500, 1-28-88; Ord. No. 95.19, 7-20-95, Ord. No. 2004.15, 4-29-04)

Sec. 33-106. Approved backflow prevention assemblies.

(a) As designated in § 33-103(b) the standard installation at each service connection to premises or each system requiring an approved backflow prevention assembly shall be a model and size approved by the department.

(b) The term "approved backflow prevention assembly" means an assembly approved by the department and shall mean an assembly that has been manufactured in full conformance with the standards established by the American Water Works Association—AWWA C506-78 most recent revised publication "Standards for Reduced Pressure Principle and Double Check Valve Backflow Prevention Assemblies", and have met completely the laboratory and field performance specifications of the Foundation for Cross-Connection Control and Hydraulic

Research (FCCCHR) of the University of Southern California established by specifications of backflow prevention assemblies in the most current issue of the "Manual of Cross-Connection Control" or another third party certifying entity approved by the department.

(c) Backflow prevention assemblies which may be subject to backpressure or backsiphonage that have been fully tested and have been granted a certificate of approval by FCCCHR may be listed on the current list of "Approved Backflow Prevention Assemblies", which will be made available upon written request to the department.
(Ord. No. 87.57, § 33-600, 1-28-88; Ord. No. 95.19, 7-20-95; Ord. No. 2004.15, 4-29-04)

Sec. 33-107. Maintenance, testing and records.

(a) The user shall maintain accurate records of tests and repairs made to backflow prevention assemblies and provide the department with copies of such records. The records shall be on forms approved by the department and shall include the list of materials or replacement parts used.

(b) Testing, maintenance and repairs to such assemblies shall be made at the customer's expense by a certified backflow prevention assembly tester that is approved by the department or any other agency designated by the department to prescribe test methods or to certify or approve persons to conduct such tests. It shall be the duty of the user to see that these tests are made at the time of the initial installation and at least once a year, on the anniversary date of the initial inspection.

(c) The user shall notify the department fifteen (15) days in advance when the annual tests are to be done, so that an official representative of the department may witness the tests if so desired.

(d) Following the installation of any assembly required by this article, it shall be tested by a certified tester. The test results shall be submitted to the community development department with a request for inspection approval before the certificate of occupancy can be issued.

(e) Following the repair, repiping, overhaul or relocation of an assembly, the user shall have it inspected by the department and tested by a certified tester.
(Ord. No. 87.57, § 33-700, 1-28-88; Ord. No. 95.19, 7-20-95; Ord. No. 97.20, 4-10-97; Ord. No. 2004.15, 4-29-04; Ord. No. 2010.02, 2-4-10)

Sec. 33-108. Inspections.

The user's system must be open for inspection at all reasonable times, and in all emergencies to authorized representatives of the department to determine whether cross-connections or other structural or sanitary hazards, including violations of these regulations, exist. When such a condition becomes known the department may deny or immediately discontinue service to the premises by providing a physical break in the service line until the user has corrected the condition in conformance with this article.
(Ord. No. 87.57, § 33-800, 1-28-88)

Sec. 33-109. Discontinuance of service.

Service of water to any premises may be discontinued by the department if a backflow prevention assembly required by this article is not installed, tested and maintained, if it has been found that a backflow prevention assembly has been removed or bypassed, or if a cross-connection exists on the premises. Service will not be restored until such conditions or defects are corrected. Tempe may also terminate a user's service upon twenty (20) days' notice in writing in non-emergency.
(Ord. No. 87.57, § 33-900, 1-28-88; Ord. No. 2004.15, 4-29-04)

Sec. 33-110. Existing assemblies and users.

(a) If the department determines that a user's backflow prevention assembly does not meet current standards, the user shall retrofit the assembly so that it will meet current standards.

(b) Whenever it is determined by the public works director or his authorized representative that a water service poses an actual or potential threat to the physical properties of the water system or potability of the public water system an assembly complying with this article shall be installed.
(Ord. No. 87.57, § 33-1000, 1-28-88; Ord. No. 2001.17, 7-26-01; Ord. No. 2004.15, 4-29-04; Ord. No. 2010.02, 2-4-10)

Sec. 33-111. Enforcement and enforcement policies; penalty; penalties non-exclusive.

(a) The provisions of this article may be enforced in the same manner as specified by Chapter 12, Article VI, Division 4.

(b) The public works director is authorized to develop and submit to the city council for its approval by resolution:

(1) An enforcement response plan; and

(2) Penalty policy.

(c) The enforcement response plan and penalty policy developed by the public works director pursuant to this section may be combined with the plans and policies developed pursuant to §§ 12-153 and 27-95, as determined appropriate by the public works director, to ensure consistent enforcement response plans and penalty policies.

(d) Any violation of this article shall constitute a misdemeanor, and shall be punishable as set forth in § 1-7 of this code.

(e) The remedies provided for in this article are not exclusive. Each day’s noncompliance constitutes a new violation. The city may take any, all or any combination of these actions against a noncompliant person.
(Ord. No. 87.57, § 33-1100, 1-28-88; Ord. No. 2012.39, 9-6-12)

Secs. 33-112—33-119. Reserved.

ARTICLE VI. WATER WASTING

DIVISION 1. IN GENERAL

Sec. 33-120. Purpose.

This article is not intended to regulate or prevent the beneficial use of water on property within the city service area. It is intended to prevent and discourage the waste of water within the city service area.
(Ord. No. 91.46, 1-23-92)

Sec. 33-121. Wasting water defined, prohibited.

No person shall waste any water supplied within the city service area. In general, the water is put to waste if it is not beneficially used and it is hereby determined that the waste of water specifically includes but is not limited to the following:

(1) Water running off a landscaped area to another area where it is not beneficially used such as to a street, sidewalk, gutter, alley, public utility easement or parking area paved or unpaved;

(2) Washing vehicles in a driveway in a manner that uses excess water beyond that reasonably necessary for washing and rinsing;

(3) The hosing down of driveways, sidewalks and other landscape should be limited and accomplished in a way that the water will run off into other landscaped areas, but, in no event, in a manner that uses excess water beyond that reasonably necessary for washing and rinsing; or

(4) Any use of water in excess of that reasonably necessary to accomplish the intended task.
(Ord. No. 91.46, 1-23-92)

Sec. 33-122. Causes of wasting water.

It is determined by the city council that a major cause for the waste of water within the city service area is the failure to properly maintain outdoor watering systems. Specific examples of such failure to maintain include but are not limited to the following:

(1) Damaged or missing spray heads;

(2) Damaged or missing bubbler heads;

(3) Damaged or missing drip irrigation lines;

(4) Failure to properly maintain berms, laterals and pipes for urban irrigation; or

(5) Failure to properly maintain automatic timing systems on landscape watering.
(Ord. No. 91.46, 1-23-92)

Sec. 33-123. Leakage, escape of water prohibited.

It is hereby prohibited for anyone to permit the excess use, loss or escape of water through breaks, leaks or malfunction in the water user's plumbing or distribution facilities for any period of time after such escape of water should have reasonably been discovered and corrected.
(Ord. No. 91.46, 1-23-92)

DIVISION 2. APPEALS AND EXCEPTIONS

Sec. 33-124. Application for exemption.

The public works director or his designee may grant an exemption for the uses of water otherwise prohibited hereby if he finds and determines that compliance with this article will be detrimental to the health, safety and welfare of the public. The public works director or his designee may grant such exception only upon an application in writing which sets forth the specific facts and circumstances which applicant claims to justify the granting of a variance. Upon granting any such exception, the public works director or his designee may impose any conditions he determines to be reasonable and proper. The conditions shall include, at a minimum, a water conservation audit of the applicant's facility.
(Ord. No. 91.46, 1-23-92; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

DIVISION 3. ENFORCEMENT

Sec. 33-125. First violation.

For a first violation, the city shall issue a verbal notice of first violation and provide educational materials on water conservation, including a copy of this article, to the water user violating the provisions of this article. A reasonable time to correct the violation will be permitted but in no case will a second violation (for the same matter) be declared sooner than fourteen (14) days after the first notice, however, additional contacts and verbal notifications may occur prior to a second violation being determined.
(Ord. No. 91.46, 1-23-92)

Sec. 33-126. Second violation (for the same matter).

The city shall issue a written notice of violation to the water user for a second violation of this article within a twelve (12) month period and require a water audit of the facility. The water conservation audit shall result in a written compliance schedule within which the water user is to comply with the provisions of this article.
(Ord. No. 91.46, 1-23-92)

Sec. 33-127. Third violation (for the same matter).

(a) The city shall issue a written notice to the water user for a third violation of this article within a twelve (12) month period after issuance of a notice of first violation, and impose a surcharge on the next monthly billing in an amount equal to twenty-five percent (25%) of the average monthly bill for the previous six (6) months for the meter through which the wasted water was supplied. The surcharge shall be added to the water billing for that meter and must be paid; nonpayment of any portion of water user's water bill may result in termination of water service.

(b) An additional written compliance schedule within which the water user is to comply with the provisions of this article shall be developed.
(Ord. No. 91.46, 1-23-92)

Sec. 33-128. Fourth violation.

(a) The city shall issue a written notice to the water user for a fourth violation of this article within a twelve (12) month period after the date of issuance of notice of first violation and impose a surcharge on the next monthly billing in an amount equal to fifty percent (50%) of the average water bill for the previous six (6) months for the meter through which the wasted water was supplied. The surcharge shall be added to the water billing for that meter through which the water was wasted and must be paid; nonpayment of any portion of the water bill may result in termination of water service.

(b) An additional written compliance schedule within which the water user shall comply with the provisions of this article shall be developed.
(Ord. No. 91.46, 1-23-92)

Sec. 33-129. Subsequent violations (for the same matter) after the fourth violation; discontinuance of service.

For any violation subsequent to the fourth violation of this article within twenty-four (24) months after the date of issuance of notice of first violation, a penalty surcharge of one month average billing for the previous six (6) months for the meter through which the wasted water was supplied shall be imposed. The city shall discontinue water service to that customer at the premises or to the meter where the violations occurred. The charge for restoration of normal service shall be two and one-half (2½) times the existing city rate for activating water service. Such restoration of service shall not be made until the public works director or his designee has determined that the water user has provided reasonable assurances that future violations of this article by such user will not occur. In addition, he may require a security deposit.
(Ord. No. 91.46, 1-23-92; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

DIVISION 4. NOTICE

Sec. 33-130. Verbal notice.

For a first violation, verbal notice of violation shall be given to the water user in person or by telephone. Educational materials on water conservation, including a copy of this article, shall be delivered in person or sent by regular mail. The verbal notice will:

(1) Inform the water user of the nature of the violation as listed in paragraphs 1 through 4 of § 33-121, paragraphs 1 through 5 of § 33-122 and § 33-123;

(2) Inform the water user that the public works director or his designee will continue to monitor for compliance; and

(3) Inform the water user that failure to correct the problem within fourteen (14) days will result in a second notice of violation (written) being issued.
(Ord. No. 91.46, 1-23-92; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Sec. 33-131. Written notice.

A written notice shall be issued for each violation subsequent to the first. The second notice shall be delivered in person or by regular mail to the water user. All subsequent notices will be delivered in person or by certified mail to the person identified on the account for the meter through which the wasted water was supplied. The notice will:

(1) Inform the water user that second, third, fourth or subsequent violation of paragraphs 1 through 4 of § 33-121, paragraphs 1 through 5 of § 33-122, or § 33-123, above, has occurred;

(2) Specify when the previous violation(s) (of the same matter) occurred;

(3) Inform the water user of the requirement for water audit and the development of a compliance schedule indicating when required measures will be completed;

(4) Inform the water user that failure to correct the problem within the time limit provided for in the compliance schedule will result in another notice of violation; and

(5) The notice shall contain, in addition to the facts of the violation, a statement of the possible penalties for each violation and a statement informing the customer of his right to a hearing on the violation. The effective date of violation shall be the date of issuance of the notice of violation.

(Ord. No. 91.46, 1-23-92)

DIVISION 5. HEARING

Sec. 33-132. Right to hearing.

Any person against whom a penalty is levied pursuant to this section shall have a right to a hearing to the public works director or his designee.

(Ord. No. 91.46, 1-23-92; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Sec. 33-133. Reservation of rights.

The rights of the city pursuant to this article are cumulative to any other fight or ordinance of the city in relation to the water user. All monies collected by the city pursuant to any of the penalty provisions of this article shall be deposited in the water enterprise fund.

(Ord. No. 91.46, 1-23-92)

Secs. 33-134—33-139. Reserved.

ARTICLE VII. WATER CONSERVATION

Sec. 33-140. New non-residential buildings or structures, "Water Conservation Report".

A building permit shall not be issued for new non-residential buildings or structures unless a "Water Conservation Report", signed by an Arizona registered architect or engineer is filed with the department of public works. A "Water Conservation Report" shall contain the following:

(1) A detailed section on proposed uses of water in the industrial process which must demonstrate conservation-oriented techniques, and that the water use is employing the latest commercially available technology consistent with reasonable economic return;

(2) A section which reports on the exterior landscaping compliance with the Zoning and Development Code, Section 4-702(B); and

(3) A section which notes all other areas of planned conservation in interior/exterior water use which demonstrates a bona fide commitment to reasonable conservation efforts.

(Ord. No. 92.27, 9-10-92; Ord. No. 2001.17, 7-26-01; Ord. No. 2004.42, 1-20-05; Ord. No. 2010.02, 2-4-10)

Sec. 33-141. Additions, alterations or repairs to existing non-residential buildings or structures, "Water Conservation Report."

Additions, alterations or repairs may be made to any existing nonresidential building or structure without requiring compliance with § 33-140 above provided the addition, alteration or repair conforms to that required for a new building or structure and provided that the additions, alterations or repairs within a twelve (12) month period do not exceed fifty percent (50%) of the value of the existing building or structure. When additions, alterations or repairs within any twelve (12) month period exceed fifty percent (50%) of the value of an existing building or structure, a "Water Conservation Report" shall be filed in accordance with § 33-140.
(Ord. No. 92.27, 9-10-92)

Editor's note—Ord. 92.27 provided that the ordinance became effective 31 days after its adoption, and that the ordinance applied to all building permits applied for after its effective date but does not apply to building permits applied for but not issued as of the effective date.

Sec. 33-142. Water plan required for new non-residential users greater than 9,000 gallons per day.

New non-residential users who have an estimated annual use which averages nine thousand (9,000) gallons per day or more (excluding turf-related facilities) are required to submit a "water use plan" sealed by an Arizona registered architect or engineer that it complies with this section as a condition to issuance of a building permit. The "water use plan" shall contain at least the following:

(1) A description of any available water conservation training programs offered to employees. Employee training information will be offered by the city to the facility after the construction is completed;

(2) Whether alternative water sources will be used (i.e., effluent, poor quality groundwater or other non-groundwater sources);

(3) Operating levels of total dissolved solids (TDS) or conductivity for cooling towers and total cooling capacity;

(4) Whether the user will use the best available conservation technologies in accordance with existing process uses (i.e., recirculating systems for process water, alternative dust control methods, automatic shut-down devices to eliminate continual running water);

(5) Any plans for the reuse of wastewater or process water at the facility; and

(6) Type of landscaping and irrigation system.

(Ord. No. 98.11, 2-26-98)

Chapter 34

WARRANTS[1]

Sec. 34-1. Defined.

An "inspection warrant" is an order, in writing, in the name of the people, signed by a judge of a court of competent jurisdiction, directed to a state, county or local official, commanding him to conduct any inspection required or authorized by state, county or local law or regulation relating to building, fire, safety, plumbing, electrical, health or zoning.
(Code 1967, § 37-1)

Sec. 34-2. Issuance—Supporting affidavit.

An inspection warrant shall be issued only upon cause, supported by affidavit, particularly describing the place, dwelling, structure, premises or vehicle to be searched and the purpose for which the search is made. In addition, the affidavit shall contain either a statement that consent to inspect has been sought and refused or facts or circumstances reasonable justifying the failure to seek such consent.
(Code 1967, § 37-2)

Sec. 34-3. Same—When cause deemed to exist.

Cause shall be deemed to exist if either reasonable legislative or administrative standards for conducting a routine or area inspection are satisfied with respect to the particular place, dwelling, structure, premises or vehicle, or there is reason to believe that a condition of nonconformity exists with respect to the particular place, dwelling, structure, premises or vehicle.
(Code 1967, § 37-3)

Sec. 34-4. Same—Examination of witnesses may be prerequisite.

Before issuing an inspection warrant, the judge may examine on oath the applicant and any other witnesses, and shall satisfy himself of the existence of grounds for granting such application.
(Code 1967, § 37-4)

Sec. 34-5. Same—By judge; statement of procedure of inspection.

If the judge is satisfied that cause for the inspection exists, he shall issue the warrant particularly describing each place, dwelling, structure, premises or vehicle to be inspected and designating on the warrant the purpose and limitations of the inspection, including the limitations required by this chapter.
(Code 1967, § 37-5)

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[1]**Cross references**—Advertising and signs, Ch. 3; Buildings and building regulations, Ch. 8; Fire prevention and protection, Ch. 14.

Sec. 34-6. Duration of warrant; extension or renewal; execution and return.

An inspection warrant shall be effective for the time specified therein, but not for a period of more than fourteen (14) days, unless extended or renewed by the judge who signed and issued the original warrant upon satisfying himself that such extension or renewal is in the public interest. Such inspection warrant must be executed and returned to the judge by whom it was issued within the time specified in the warrant or within the extended or renewed time. After the expiration of such time the warrant, unless executed, is void.
(Code 1967, § 37-6)

Sec. 34-7. Hours of inspection; forcible entry prohibited; exceptions; notice.

An inspection pursuant to this warrant may not be made between 6:00 p.m. of any day and 8:00 a.m. of the succeeding day, nor in the absence of an owner or occupant of the particular place, dwelling, structure, premises or vehicle unless specifically authorized by the judge upon a showing that such authority is reasonably necessary to effectuate the purpose of the regulation being enforced. An inspection pursuant to a warrant shall not be made by means of forcible entry; except that the judge may expressly authorize a forcible entry where facts are shown sufficient to create a reasonable suspicion of violation of a state, county or local law or regulation relating to buildings, fire, safety, plumbing, electrical, health or zoning, which, if such violation existed, would be an immediate threat to health or safety, or where facts are shown establishing that reasonable attempts to serve a previous warrant have been unsuccessful. Where prior consent has been sought and refused, notice to the owner or occupant that a warrant has been issued must be given at least twenty-four (24) hours before the warrant is executed, unless the judge finds that immediate execution is reasonably necessary in the circumstances shown.
(Code 1967, § 37-7)

Sec. 34-8. Refusal to permit inspection prohibited; penalty.

Any person who wilfully refuses to permit an inspection lawfully authorized by warrant issued pursuant to this article is guilty of a misdemeanor punishable as set forth in § 1-7 of this code.
(Code 1967, § 37-8)

Chapter 35

ZONING ORDINANCE[1]

Sec. 35-1. Ordinances not affected by code.

Nothing in this code or the ordinance adopting this code shall affect the Zoning and Development Code and such ordinance is hereby recognized as continuing in full force and effect to the same extent as if set out at length in this code.

Editor's note—The Zoning and Development Code is contained in a separate document which was adopted on January 20, 2005.

[1] **Cross references**—Buildings and building regulations, Ch. 8; Planning and development, Ch. 25.
State law references—Municipal zoning, A.R.S. § 9-461 et seq.

APPENDIX A

SCHEDULE OF FEES AND CHARGES

For the purpose of providing a clear and concise listing of the fees and charges authorized by the provisions of this code and city ordinances in payment for licenses, permits and services performed or provided by the City, a schedule of fees and charges, or fee schedule, as adopted by resolution of the Mayor and City Council, is set forth in this Appendix. The heading gives the title of the appropriate chapters and articles as applicable.
(Res. No. 93.81, 11-18-93)

Code Section Fee

ADMINISTRATION

2-30 City Court User Charge.....$20.00
(Funds to be distributed to the City Court Enhancement Fund)
(Res. No. R2014.110, 8-14-14)

2-32 Prosecution Assessment.....$125.00
(Res. No. 2008.85, 9-18-08, Res. No. 2011.28, 6-16-11)

2-134 Community Services Department

City of Tempe Neighborhood Facility Rental Fees
Community Services Neighborhood Facilities
Library, Museum, Vihel, Clark, Pyle, Escalante, Westside, North Tempe

Business Hours	**Resident**	**Resident Not-For-Profit**	**Resident Commercial**	**Non-Resident**	**Non-Resident Not-For-Profit**	**Non-Resident Commercial**
Room Type	**Per Hour**					
Conference Room	$5	$5	$20	$10	$5	$20
Classroom	$5	$5	$20	$10	$5	$20
Classroom Large	$10	$10	$40	$20	$10	$40
Multipurpose Room	$30	$30	$120	$60	$30	$120
Multipurpose Room Half	$15	$15	$60	$30	$15	$60
Gymnasium	$90	$90	$150	$120	$90	$150
Gymnasium Half	$50	$50	$120	$80	$50	$120

Outside Business Hours	Resident; Resident Not-For-Profit; Resident Commercial	Non-Resident; Non-Resident Not-For-Profit; Non-Resident Commercial
Room Type	**Per 2-Hour Minimum**	
Conference Room	$80	$80
Classroom	$80	$80
Classroom Large	$100	$100
Multipurpose Room	$180	$180
Multipurpose Room Half	$120	$120
Gymnasium	$210	$210
Gymnasium Half	$180	$180

Deposits and additional fees may be charged based on activity for reservation.

The prioritization for the use of these city facilities is as follows:

1. City use
2. Community partners
3. Tempe not-for-profit organizations
4. Tempe residents
5. Non-resident not-for-profit organizations
6. Non-residents
7. For-profit organizations

(Res. No. 2012.131, 12-13-12)

Fee for use of Performing Arts Center:

Performance Space (Theatre)

A. A flat rate of $225.00 will be assessed to each group that uses the performance space for three (3) to seven (7) days or on weekends.

B. For those organizations which use the facility for less than three (3) days, the following will apply:

1. Nonprofit organizations ..... $15.00 per hour
maximum $150.00 per day

2. For profit/commercial organizations..... $25.00 per hour
maximum $250.00 per day

C. Use of the performance space includes use of the box office, control booth, dressing rooms and greenroom. Use of the assembly area will be on an availability basis only.

Classrooms

A. Groups rehearsing and staging work which is scheduled for the performance area can utilize a classroom at no charge for a period not to exceed four (4) weeks prior to performance. Rehearsal schedules must be approved by the community services director or his designee prior to usage. Modification or extension of the approved schedule may result in additional charges as listed below. Use of the classroom for these purposes will be on an availability basis.

B. For those organizations which use the classrooms on a periodic basis for non-revenue generating purposes, the following will apply:

1. Nonprofit organizations:
   No charge for use during normal business hours
   (Monday - Friday 9:00 a.m. - 5:00 p.m.)
   For use outside normal business hours ..... $15.00 per hour
   maximum $150.00 per day

2. For profit/commercial organizations:..... $25.00 per hour
   maximum $250.00 per day

C. For those organizations which use the classrooms for instructional classes, workshops or other revenue generating activities the fee will be 15% of total paid enrollment or $15.00 per hour whichever is greater.

D. Some users may require additional personnel by the city as deemed necessary by the official designated by the community services director. Additional personnel must be paid for by the permittee; hourly rates are as follows:

1. Community services department employee $10/hr
2. Stage lighting technician..... $10/hr
3. Sound technician..... $10/hr
4. Police officer..... $41.70/hr

Tempe History Museum Community Room Rental Fee Chart:

The City Manager, through his designee, shall adopt the following room rental fee for the Tempe History Museum to be increased annually by no more than 10%.

Tempe History Museum	City Departments or Community Partners	Non-commercial 1st hour	Non-commercial Each additional hour	Commercial or Non-resident 1st hour	Commercial or Non-resident Each additional hour
Community Room	No charge	$30	$15	$150	$50

2-144 Public Works Department

Don Cassano Community Room Fees and Charges

Flat Fees

	Room Charge Half Room First Hour	Additional Hr.	Room Charge Entire Room First Hour	Additional Hr.
Tempe Resident	$15	$5	$30	$5
Non-Profit	$15	$5	$30	$5
Non-Resident	$60	$10	$120	$20
Community Partner^	$0	$0/$15*	$15	$30**

* Under 2 hours – no charge; Over 2 hours $15 flat fee

** Under 2 hours $15 flat fee; Over 2 hours $30 flat fee

^ Government agencies; entities that have a current intergovernmental agreement with the city; tenants of the Transportation Center. Groups cannot apply to be Community Partners.

Staffing Charges

	During Business Hours			**Outside Business Hours**		
Number of Attendees	Administrative Staff @ $23 hr	Custodial Staff @ $26 hr	Security Staff @ $30 hr	Administrative Staff @ $35 hr	Custodial Staff @ $26 hr	Security Staff @ $30 hr
0-29	0	0	0	0	0	0
30-59	0	0/.5*	0	0	0/.5*	0
60-99	0	0.5	0	1	0.5	0
100-149	0	1	0	1	1	1
150-200	0	2	0	1	2	1

* If furniture has to be removed or if furniture has to be added or if food is included; .5 custodial staffing is required.

(Res. No. 95.44, 8-24-95; Res. No. 96.62, 10-10-96; Ord. No. 2010.02, 2-4-10; Res. No. 2010.81, 8-19-10; Res. No. 2011.19, 8-18-11)

ALCOHOLIC BEVERAGES

Application Filing Fee

4-3(a) Filing fee for liquor license application $500.00

4-4(a) First year issuance fee $200.00

4-4(b) Renewal each year by January 1 ..... See 4-5 for tax rate

4-4(f) Late renewal penalties $100.00
or 15% of the past due amount, whichever is greater, plus 1% interest per month of taxes and/or fees due.

Note: Licensees with existing, valid Series 9 (Liquor Store) and Series 10 (Beer and Wine Store) State and City of Tempe Liquor Licenses, who apply for a new State Liquor License to allow sampling privileges, per 4-206.01.J of the Arizona Revised Statutes, the first year issuance fee shall be waived and all City license taxes paid for the existing license shall be applied to the new license, pro-rata, based on the month of issuance.

(Res. No. 98.34, 5-28-98; Res. No. 2010.136, 10-21-10)

Tax Rate Schedule

4-5 Tax rate schedule for continuing licenses and new licenses issued on or before June 30th of any calendar year:

Number and type and annual tax rate

1.	In-state producer's license	$1,000.00
2.	Out-of-state producer's license	$1,000.00
3.	Domestic Microbrewery	$1,200.00
4.	In-state wholesaler's license	None
5.	Government license	$200.00
6.	Bar license	$1,200.00
7.	Beer and wine license	$500.00
8.	Conveyance license	$400.00
9.	Liquor store license	$450.00
10.	Beer and wine store license	$300.00
11.	Hotel/motel license	$1,200.00
12.	Restaurant/Continuance license	$1,200.00
13.	Domestic farm winery license	$400.00
14.	Private club license	$300.00
15.	Special event	(see below)
16.	Wine festival/wine fair	$25.00 per day/per event

If a liquor license is issued on or after July lst of any year, three-fourths of the annual license fee shall be charged.

(Ord. No. 90.24, 7-12-90; Res. No. 95.16, 4-13-95; Res. No. 2008.37, 5-15-08)

Special Event License Fee

4-6(b) Special event license application fee $25.00

4-6(d) Special event license permit fee $25.00/day

AMUSEMENTS

Coin-operated Machines

5-1(a) Coin-operated machines per calendar year ..... $20.00/ea.

5-1(c) Renewal license after January 1 penalty 20%

Special Events; Permit and Application Fees

5-2(a) Special event permit fee ..... $100.00/day up to $500.00 maximum for events held on consecutive days not to exceed 60 days

5-2(c) Special event application fee $35.00
Special event application late fee $50.00
(Res. No. 95.50, 9-21-95; Res. No. 2000.65, 11-2-00)

Fortunetellers, Etc.; License

5-3(b) Fortunetellers application fee $150.00
Photograph fee $10.00
Fingerprinting fee ..... Direct Cost

5-3(f) First year licensee fee $100.00
(annual license renewal fee) $100.00
(late renewal penalty fee due after 12/31) $50.00
(business relocation fee) $50.00
(Res. No. 2002.25, 8-1-02)

Bingo License

5-24 City bingo license tax (payable on or before January 1) $25.00
(renewal license after January 1 - penalty) $5.00
City application fee-small game (state assigned) $5.00
City application fee-large game (state assigned) $25.00

Nuisance Parties and Unlawful Gatherings

5-33 Police service fee for special security assignments related to nuisance parties:
First response……..….$250.00
Second response……$1,000.00
Third response and each subsequent response……..……$1,500.00

Police service fee or special security assignments related to unlawful gatherings:
First response……..….$250.00
Second response……$1,000.00
Third response and each subsequent response……..……$1,500.00
(Res. No. 2003.70, 10-30-03; Ord. No. 2011.98, 11-3-11; Res. No. 2013.68, 6-13-13)

ANIMALS

Dog Licensing Fees

6-28(a) Annual fee for licensing dogs:
(neutered) $9.00
(unneutered) $19.00
(Res. No. 90.51, 9-27-90; Res. 95.17, 4-13-95)

BUILDINGS AND BUILDING REGULATIONS

Appeal Filing Fees

8-100 Filing fee for appealing a decision of the community development director applying to the technical provisions of the building code or to an alternate material or method of construction.

Each variance for a single building or the same variance for multiple buildings or the same lot, including historic buildings.....$100.00

Appeal from a determination of the community development director $100.00

Approval of alternate materials or methods of construction $200.00
(Ord. No. 89.46, 8-10-89; Ord. No. 97.20, 4-10-97; Res. No. 2001.17, 5-10-01; Ord. No. 2010.02, 2-4-10)

Filing fee for appealing a decision of the community development director applying to the technical provisions of the electrical code or to an alternate material or method of construction.

Each variance for a single building or the same variance for multiple buildings or the same lot, including historic buildings.....$100.00

Appeal from a determination of the community development director $100.00

Approval of alternate materials or methods of construction $200.00

(Ord. No. 89.46, 8-10-89; Ord. No. 97.20, 4-10-97; Res. No. 2001.17, 5-10-01; Ord. No. 2010.02, 2-4-10)

Filing fee for appealing a decision of the community development director applying to the technical provisions of the plumbing and mechanical code or to an alternate material or method of construction.

Each variance for a single building or the same variance for multiple buildings or the same lot, including historic buildings.....$100.00

Appeal from a determination of the community development director $100.00

Approval of alternate materials or methods of construction $200.00

(Ord. No. 89.46, 8-10-89; Ord. No. 97.20, 4-10-97; Res. No. 2001.17, 5-10-01; Ord. No. 2010.02, 2-4-10)

Table 1-A — Building Permit Fees[1]

TOTAL VALUATION	FEE
$1.00 to $500.00	$64.00
$501.00 to $2,000.00	$**64.39** for the first $500.00 plus **$4.40** or each additional $100.00 or fraction thereof, to and including $2,000.00
$2,001.00 to $25,000.00	**$130.39** for the first $2,000.00 plus **$20.20** for each additional $1,000.00 or fraction thereof, to and including $25,000.00
$25,001.00 to $50,000.00	**$594.93** for the first $25,000.00 plus **$14.56** for each additional $1,000.00 or fraction thereof, to and including $50,000.00
$50,001.00 to $100,000.00	**$959.20**for the first $50,000.00 plus **$10.10** for each additional $1,000.00 or fraction thereof, to and including $100,000.00
$100,001.00 to $500,000.00	**$1,464.12** for the first $100,000.00 plus **$8.06** for each additional $1,000.00 or fraction thereof, to and including $500,000.00
$500,001.00 to $1,000,000.00	$**4695.58** for the first $500,000.00 plus $**6.86** for each additional $1,000.00 or fraction thereof, to and including $1,000,000.00
$1,000,001.00 and up	**$8121.80** for the first $1,000,000.00 plus **$5.27** for each additional $1,000.00 or fraction thereof

Other Fees:

1. Inspections outside of normal business hours ..... **$104.00** per hour
   (Minimum charge – three hours & one half hour increments thereafter)

2. Reinspection fees assessed under provisions of Sec. 108.8 ..... **$104.00** per hour

3. Inspections for which no fee is specifically indicated..... **$104.00** per hour
   (Minimum charge – one hour & one half hour increments thereafter)

4. Additional plan review required for 4th and subsequent reviews, changes or revisions to approved plans ..... **$129.00** per hour
   (Minimum charge – one hour & one half hour increments thereafter)

Cross reference—Apache Boulevard Redevelopment Area Fee Reduction – See Chapter 35(o), Zoning and Development Fee Schedule.

Cross reference—Storefront Improvement Program – See Chapter 35(p), Zoning and Development Fee Schedule.

(Ord. No. 91.21, 6-27-91; Ord. No. 93.18, 6-24-93; Ord. No. 97.40, 9-11-97; Res. No. 2001.17, 5-10-01; Res. No. 2007.30, 5-31-07; Res. No. 2008.82, 9-11-08; Res. No. 2009.57, 6-11-09, Res. No. 2013.51, 5-9-13)

[1] Pursuant to Resolution No. 2007.30, the City Council approved annual fee adjustments based on the annual United States Department of Labor, Bureau of Labor Statistics Consumer Price Index—All Urban Consumers, West Region, effective at the beginning of each fiscal year beginning July 1, 2008.

Table No. 2-A — Miscellaneous Fees[2]

TYPE	FEE
New residential swimming pool permit	**$322.00***
Mobile home installation	**$64.00***
Patio cover addition to single family residence (per patio cover)	$**194.00***
Convert single family carport to garage	$**258.00***
Convert single family carport, garage or patio cover to livable	$**645.00***
Single family solar water heater	$145.00*
Single family photovoltaic system	$350.00*
Single family water/sewer line replacement	$**160.00***
Refuse Enclosure (Tempe Standard Details DS-116 or DS 118)	$**70.00***
Non-standard refuse enclosure	$**108.00***
Replace/upgrade residential electrical service ≤ 300 amp	$**129.00***
Demolition permit (per structure)/Non-structural demo	$**64.00***
Factory built building onsite permit	$**322.00***
Planning plan review fee	$**96.00**
Plan review for permits on standard plans (homes, metal parking canopies, etc.)	$**64.00***
Grading permit	$**322.00***
Temporary power pole or pedestal	$**64.00***
Construction power at permanent electrical service	$**645.00**
Public information requests	$**40.00**
Modification and alternate material requests (Sec. 103.12 & 13) Residential Commercial	 $**194.00** $**387.00**
Plan review status meeting	$**387.00**
Temporary certificate of occupancy First 30 days or each 30 day extension, up to 90 days	$**645.00**
Annual utility permit (Sec. 104.10)	$**939.00**
Annual maintenance permit (Sec. 104.8)	$**189.00**
Registered industrial plant annual permit fee (Sec. 104.11)	$**965.00**
Maintenance electrician & plumber exams (Sec. 104.9)	$**64.00***
Maintenance electrician & plumber renewals (Sec. 104.9)	$**32.00***

[2] Pursuant to Resolution No. 2007.30, the City Council approved annual fee adjustments based on the annual United States Department of Labor, Bureau of Labor Statistics Consumer Price Index—All Urban Consumers, West Region. Such fees will be adjusted each July 1.

*Includes Plan Review Fee

Cross reference—Apache Boulevard Redevelopment Area Fee Reduction – See Chapter 35(o), Zoning and Development Fee Schedule.

Cross reference—Storefront Improvement Program – See Chapter 35(p), Zoning and Development Fee Schedule.

(Ord. No. 93.18, 6-24-93; Res. No. 2001.17, 5-10-01; Res. No. 2007.30, 5-31-07; Res. No. 2008.82, 9-11-08; Res. No. 2009.57, 6-11-09; Res. No. 2010.33, 4-22-10; Res. No. 2011.75, 8-18-11, Res. No. 2013.51, 5-9-13)

CABLE ANTENNA TELEVISION

License Fee

10-12 Application fees for initial cable license.....$5,000.00
(See Ord. No. 91.33, 10-17-91)

DRAINAGE AND FLOOD CONTROL

Drainage Permit Fees[3]

12-73 For Drainage and Floodplain Use Permit Fees, See Section 29-19 of this Appendix.

1. Individual Storage:

Individual single-family lot.....$23.80
2 to 5 lots.....$59.24
6 to 20 lots.....$59.24
plus $15.88 per lot over 5

21 to 100 lots.....$295.90
plus $7.45 per lot over 20

Over 100 lots.....$887.55
plus $2.53 per lot over 100

2. Central storage:

Less than 1 acre.....$118.44
Over 1 acre, per acre $118.44

3. Combination storage ..... sum of fees for individual storage.

(See Ord. No. 93.03, 2-11-93; Res. No. 2009.41, 12-10-09)

[3] Pursuant to Resolution No. 2009.41, the City Council approved annual fee adjustments based on the annual United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index—All Urban Consumers, West Region. Such fees will be adjusted each July 1.

FIRE PREVENTION AND PROTECTION

Permit Fees

14-16

1. Blasting agents/explosives:
   For the storage, handling and use of blasting agents and explosives primarily for construction or demolition $250.00

2. Combustible/flammable liquids:
   Combustible/flammable liquid tank installation
   Each tank $300.00
   Underground tank removal:
   Each tank with pump out $250.00
   Temporary above ground tank $250.00

3. Compressed gas systems installation - each system $400.00

4. Dust collection, wood shops $100.00

5. Fireworks - each firework location $250.00

6. Hazardous materials - storage, handling or use:
   Includes review of hazardous chemicals list and MSDS for occupancy classification of each building or building area, greater than exempt amounts $500.00
   Note: Greater than exempt amounts requires entry into an approved web-based electronic hazardous materials program
   Less than exempt amounts $100.00

7. Liquefied petroleum gases (LPG) installation - systems greater than 125 gallon water capacity $150.00
   LPG tank exchange (annual) ..... $ 75.00

8. Miscellaneous - roof kettles, fumigation $150.00

9. Special events, carnivals, trade shows, exhibits, street festival, etc. (each event) $200.00
   Haunted houses $500.00

10. Tents > 400 sq. ft./canopies > 900 sq. ft. - temporary:
    Single tent/canopy $350.00
    Each additional tent/canopy $250.00

11. Dial-up third party monitoring $200.00

12. Revisions to approved plans $100.00

13. Fireworks, permit to store or sell, each location (Annual permit) $500.00

Inspection Fees

14. Fire protection systems:
    - Automatic sprinkler system $500.00
    - Tenant improvement one to thirty heads $100.00
    - Tenant improvements greater than 30 heads $250.00

Note: No fee for R-3/Single Family

- Automatic hood systems installation:
  - Single system $150.00
  - Multiple systems - first $150.00
  - Multiple systems - additional ..... $ 75.00

- Fire alarm system installation $500.00

- Fire pumps:
  - Single pump $500.00
  - Re-certification each pump $250.00

- Clean agent systems $500.00

- Standpipes wet/dry:
  - Up to 5 ..... $250.00
  - Each additional $150.00

- Spray booths, room or area:
  - Single $400.00

- Extension of premises:
  - Less than 10,000 sq.ft. $200.00
  - More than 10,000 sq.ft. $250.00

- Apparatus access roadways and gates $100.00

- Motor vehicle fuel stations (annual inspection) $100.00

- Fraternities/sororities (annual inspection) $500.00

- Inspections requested after normal duty hours and
  for fire watch per hour (minimum 2 hours) $100.00

- Self-inspection for qualified businesses $25.00

- All fire protection inspection fees include plan review,
  one initial inspection and one reinspection
  Each additional reinspection per hour (minimum 2 hours) $100.00

15. State licensing:
    R-3 and R-4 group care homes $150.00
    1 Occupancies (institutional) $125.00
    Child daycare/food programs.....$ 10.00
    Other, including commercial day care facilities, medical offices.....$100.00

    Note: Fee is for required annual inspections by the ADHS for licensing and shall include consultation throughout the year between facilities and the division of fire prevention regarding any fire prevention issues.

16. Specialty license pursuant to Tempe City Code:
    Liquor, massage establishments, pawnbrokers, etc. $150.00

Cross reference—Apache Boulevard Redevelopment Area Fee Reduction – See Chapter 35(o), Zoning and Development Fee Schedule.

Cross reference—Storefront Improvement Program – See Chapter 35(p), Zoning and Development Fee Schedule.

Operational Fees

Field incident report.....$ 12.00
Photographs (digital/discs).....$ 15.00
Environmental assessment records research.....$ 25.00
International Fire Code variance requests.....$100.00
Work without fire permits..... Double original permit fee

(Res. No. 91.46, 7-25-91; Res. No. 2005.16, 4-21-05; Res. No. 2009.16, 3-5-09; Res. No. 2009.57, 6-11-09; Res. No. 2010.53, 7-1-10, Res. No. 2013-51, 5-9-13)

PRIVILEGE AND EXCISE TAXES

Privilege License Fee

16-300 Application/license fee for privilege license.....$ 70.00

16-310 Renewal fee $50.00
Late renewal penalty fee $15.00

16-315 Application/license fee for transient privilege license.....$25.00

(Ord. No. 94.19, 6-30-94; Ord. No. 2008.52, 10-2-08)

LICENSES, TAXES AND MISCELLANEOUS REGULATIONS FEES AND OTHER CHARGES

Pawnbroker, Secondhand Dealer, Auction House and Scrap Dealer Fee

16A-26 Annual license fee.....$ 50.00
After July 1.....$ 35.00

Residential Development

16A-41 Residential development tax (each dwelling unit).....$470.00
(Ord. No. 88.82, 1-26-89; Ord. No. 97.04, 7-10-97)

Escorts, Escort Bureaus and Introductory Services

16A-67 Nonrefundable application fee - escort bureau $500.00
Nonrefundable application fee - introductory service.....$200.00
Nonrefundable application fee - escort $100.00
Nonrefundable application fee - escort runner.....$100.00

License fee - escort bureau.....$200.00
License fee - introductory service $200.00
License fee - escort.....$100.00
License fee - escort runner $100.00
(Res. No. 95.70, 12-14-95; Res. No. 96.01, 1-11-96)

After-Hours Application and Fees

16A-79 Application fee for After-hours
Establishment (non-refundable).....$100.00
License fee for After-hours (per day).....$100.00
License fee for After-hours (annual).....$500.00
If license is issued on or after July 1st of any year, one-half of the annual license fee shall be charged.

Tele-track Wagering Application Fee

16A-104 Tele-track wagering application
fee (non-refundable).....$200.00

Plus, annual permit fees of

Up to four (4) pari-mutuel betting windows
or tote machines (annual).....$1,200.00

Excess of four (4) pari-mutuel betting windows
or tote machines (each window per year).....$400.00

Adult-Oriented Business

16A-131 Nonrefundable application fee - business $500.00
Nonrefundable application fee - service provider $100.00
Nonrefundable application fee - service manager $100.00

License fee - business $200.00
License fee - service provider $100.00
License fee - service manager $100.00
(Res. No. 95.70, 12-14-95)

Teen Dance Hall

16A-144 Nonrefundable application fee $200.00
License per day $100.00
Annual License $500.00
(Res. No. 95.72, 12-21-95)

Massage Establishments

16A-164 Nonrefundable application fee for massage or bodywork establishment $100.00
Massage or bodywork establishment license $100.00

Fingerprint processing fee ..... (direct cost)

Photograph fee $10.00

Renewal of massage or bodywork establishment license
(due on or before December 31st) $100.00
Late renewal penalty fee ..... $ 50.00
(Res. No. 96.18, 6-6-96; Res. No. 98.08, 1-22-98; Res. No. 2001.43, 9-13-01; Res. No. 2002.25, 8-1-02)

MOTOR VEHICLES AND TRAFFIC

Special Permits for Overweight/Overheight Vehicles[4]

19-45 Application fee for excess size .....$ 16.15
Plus, each 30-day permit issued for excess size.....$ 32.18

Each permit issued for excess weight .....$ 26.90
Plus, each 30-day permit issued for excess weight.....$ 53.65

Special Permit for Hauling Waste Material[5]

19-50 Special permit for hauling construction waste fill or waste excavation material:
Under 5,000 cubic yards or less than ten (10) days in duration ..... no charge
Over ten (10) days in duration and less than 5,000 cubic yards.....$571.62
5,000 to 10,000 cubic yards $571.62
Greater than 10,000 cubic yards.....$2,286.43
(Res. No. 2005.58, 10-20-05; Res. No. 2008.31, 5-1-08)

Residential Permit Parking

19-114 Fee for issuing residential parking permit (first one).....Free
Additional permits .....$ 5.00
(Res. No. 2009.41, 12-10-09)

Parking Meter Rates

19-144 On-street parking..... $1.50 per hour
Parking lots ..... $1.50 per hour with a maximum fee of $12.00 per day
Disabled parking space ..... No charge
(Res. No. 2007.39, 5-31-07; Res. No. 2011.70, 8-18-11)

Traffic Barricade Program[6]

19-174 1. Construction Flat Fees
Traffic control plan review $50.00
Issuance of Traffic Barricade Permit $75.00
Annual Traffic Barricade Fee for Public Utilities.....$12,000.00

2. Construction Variable Fees
Sidewalk closure .....$50.00 per day up to a $1,000 maximum
Bike lane or bike path closure.....$50.00 per day up to a $1,000 maximum

Arterial roadway restrictions. Variable fees are applied to the placement of

[4, 5, 6] Pursuant to Resolution No. 2009.41, the City Council approved annual fee adjustments based on the annual United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index—All Urban Consumers, West Region. Such fees will be adjusted each July 1.

traffic control devices on arterial roadways during the weekday by the amount of roadway capacity that is restricted and the number of days that the roadway restriction is in place. These fees do not apply to weekend, holiday and night (7 p.m. – 6 a.m.) roadway restrictions. Construction that occurs for a period of time longer than 60 days shall be resubmitted to Traffic Engineering, prior to permit expiration, and appropriate fees will apply. The following variable fee structure applies to arterial roadway restrictions:

Less than 50% travel restriction per direction, per mile		**50% or more travel restriction per direction, per mile***	
Time Period	**Cost**	**Time Period**	**Cost**
Day 1	$ 0	Day 1	$50.00
Day 2	$75.00	Day 2	$150.00
Day 3	$100.00	Day 3	$200.00
Day 4	$125.00	Day 4	$250.00
Day 5	$150.00	Day 5	$300.00
Day 6 - 10	$300.00	Day 6 - 10	$600.00
Day 11 - 29	$525.00	Day 11 - 29	$1,050.00
Day 30 - 60	$1,000.00	Day 30 - 60	$2,000.00

* Arterial closures will be assessed a variable fee of $2,500.00 per day, per direction calculated in daily increments.

3. Special Event Fees
   Traffic control plan review ..... $50.00 per page
   Issuance of special event traffic barricade permit.....$75.00

(Res. No. 2009.25, 5-7-09; Res. No. 2009.41, 12-10-09; Res. No. 2010.l20, 12-9-10)

NUISANCES AND PROPERTY ENHANCEMENT

Residential

	1st Violation	**2nd Violation**	**3rd Violation**
Violations—Aesthetic Section 21-3, Enumerated Violations *subsections (b)1-8 and 18-19* Section 21-4, Other enumerated violations Section 21-13, Unenumerated violations Section 21-38, Maintenance *subsections (a – k) and (m – q)*	$150	$250	$350
Violations—Essential Services Section 21-31, Sanitary Facilities Section 21-32, Food Preparation Facilities Section 21-33, Electrical and Lighting Section 21-35, Doors; Windows; Ventilation Section 21-36, Space and Occupancy	$250	$450	$650

Violations—Health, Safety & Welfare Section 21-3, Enumerated Violations *subsections (b) 9-16* Section 21-34, Thermal Environment Section 21-37, Safety and Security Section 21-38, Maintenance *subsection (l), Swimming Pool Maintenance*	$350	$650	$950
Habitual Offender Section 21-4(b)	$500 + sum of other fines	$1,000 + sum of other fines	$1,500 + sum of other fines
Zoning & Development Code Violations Section 1-201A, Violations and Penalties	$120	$370	$770

Commercial

	1st Violation	2nd Violation	3rd Violation
Violations—Aesthetic Section 21-3, Enumerated Violations *subsections (b)1-8 and 18-19* Section 21-4, Other enumerated violations Section 21-13, Unenumerated violations Section 21-38, Maintenance *subsections (a – k) and (m – q)*	$120	$370	$770
Default Amount	$170	$420	$820
Zoning & Development Code Violations Section 1-201, Violations and Penalties	$120	$370	$770
Default Amount	$170	$420	$820

21-51 Reinspection fee.....$ 75.00

21-53 Nuisance abatement fee ..... 15% of the actual cost of abatement or $300.00 whichever is greater with the cost of recording liens and releases thereof.

(Ord. 93.42; Res. No. 98.01, 1-8-98; Res. No. 99.57, 9-30-99; Res. No. 2002.38, 7-11-02; Res. No. 2007.22, 5-3-07; Res. No. 2007.92, 1-24-08; Res. No. 2009.57, 6-11-09)

OFFENSES - MISCELLANEOUS

Posting Property for Sale of Motor Vehicles

22-11 Fee for posting property relating to unauthorized sale of motor vehicles.....$ 25.00

Permits for Alarms

22-76 Fee for alarm permit (initial)
Residential.....$ 10.00
Businesses.....$ 15.00
Annual renewal fee
Residential.....$ -0-
Businesses.....$ 15.00
Delinquent renewal fee.....$ 50.00
Delinquent permit fee.....$ 50.00

22-77.1 Residential: Service fee for 3rd excessive false alarm within one permit year or 2nd excessive false alarm from non-permitted alarm users who provide necessary responsible party information.....$ 50.00
To increase in $50.00 increments per subsequent false alarm in one permit year

Businesses: Service fee for 2nd excessive false alarm within one permit year or 1st excessive false alarm from non-permitted alarm users who provide necessary responsible party information.....$ 50.00
To increase in $50.00 increments per subsequent false alarm in one permit year

Service fee for 2nd excessive false alarm from non-permitted alarm users who do not provide necessary responsible party information.....$100.00
To increase in $100.00 increments per subsequent false alarm

22-78 Service fee for each excessive audible alarm which is activated for more than twenty minutes.....$ 75.00

(Res. No. 99.43, 7-22-99; Res. No. 2000.20, 3-16-00; Ord. No. 2006.91, 11-16-06; Res. No. 2008.97, 11-6-08)

PARKS AND RECREATION

Sound Amplification

23-46 Permit fee for use of sound amplification equipment.....$ 2.00

User Fees/Charges

23-57 Parks and Recreation program fees and services included by reference. (Copy on file in City Clerk's Office, which may be amended by city council resolution)

PEDDLERS, SOLICITORS AND ITINERANT MERCHANTS

Mobile Merchant Permit

24-16	Application fee for mobile merchant (non-refundable)	$ 100.00
	Annual permit fee for mobile sales unit	$ 50.00
	Late renewal fee	$ 25.00
	Fingerprinting	Direct Cost

Kiosk Vending Permit

24-36	Application fee for kiosk vending (non-refundable)	$ 100.00
	Annual permit fee for kiosk vending	$ 500.00
	Late renewal fee	$ 250.00
	Fingerprinting	Direct Cost

Solicitors, Door to Door Sales and Nonprofit Permit

24-71	Application fee for solicitors (non-refundable)	$ 100.00
	Annual permit fee for solicitors	$ 50.00
	Annual fee for solicitors ID card	$ 5.00
	Late renewal fee	$ 25.00
	Fingerprinting	Direct Cost
	Application fee for door to door sales (non-refundable)	$ 100.00
	Annual permit fee for door to door Sales	$ 50.00
	Annual fee for door to door seller ID card	$ 5.00
	Late renewal fee	$ 25.00
	Fingerprinting	Direct Cost
	Nonprofit permit	No fee
	Fingerprinting	Direct Cost

(Res. No. 2004.24, 4-29-04; Res. No. R2014.131, 10-2-14)

POLICE

26-60	Public Safety Enhancement Charge	$ 30.00
	(Funds to be distributed to the General Fund)	

(Res. No. 2010.83, 6-24-10)

SEWERS AND SEWAGE DISPOSAL

27-173 Sewer Tap Fees

Six-inch alley (including pavement replacement).....$1,100.00
Six-inch street (including pavement replacement)
Local and collector.....$1,800.00
Six-inch street (arterial) .....Actual cost
Four-inch machine tap only $110.00
Six-inch machine tap only.....$110.00

Charges for taps outside the city will be 1½ the above fees.

Charges for dye test (per request) .....$ 25.00

27-174 Charges to person make his own sewer tap inspection fee .....$ 15.00
(See Ord. 93.40; 11-18-93; Res. No. 99.30, 11-18-99)

27-196 Sewer Rates

(a) The following fee structure shall be established for sewer service charges effective January 1, 2014:

METER SIZE	MONTHLY SERVICE CHARGE
5/8"	$ 10.30
3/4"	$ 14.00
1.0"	$ 25.10
1.5"	$ 46.70
2.0"	$ 72.60
3.0"	$ 176.00
4.0"	$ 349.00
6.0"	$ 695.00
8.0"	$ 1,650.00
10.0"	$ 2,600.00

(b) For billing purposes, new industrial customers shall be temporarily assigned by the public works department to the industrial user classification which reflects expected discharge strengths until such time that actual discharge strengths can be determined.

(c) The quantity of wastewater discharged by residential customers shall be based upon the three month winter average water consumption (January-March billing statements) for each account. The sewer charge for new residential customers shall assume a monthly winter average water consumption of 10,400 gallons until an actual winter monthly water consumption average can be obtained. The following exceptions shall apply:

(1) The quantity of wastewater discharged by residential customers shall be based on actual monthly water consumption upon verification by the public works department that landscape irrigation water is available through another source of supply.

(2) The sewer charge for new multi-family residential customers shall assume a monthly winter average water consumption of 10,400 gallons per housing unit until an actual winter monthly water consumption average can be obtained, unless the above exception applies.

(d) The quantity of wastewater discharged by commercial, industrial and governmental customers shall be based on actual monthly water consumption unless the wastewater discharges are metered.

(e) The following fee structure shall be established for the sewer charges effective January 1, 2014:

SEWER CATEGORY	ACCOUNT TYPE	$ SEWER CHARGE PER 1,000 GALLONS
1100	Residential; single family	$ 1.75
1150	Residential; single family; Guadalupe	1.75
1400	Residential; multi-family	1.75
1450	Residential; multi-family; Guadalupe	1.75
2100	Commercial; self-service laundry	2.73
2110	Commercial; self-service laundry; Guadalupe	2.73
2120	Commercial; laundry; dry cleaners	7.55
2500	Commercial; restaurants; bakeries	7.55
2550	Commercial; restaurants; bakeries; Guadalupe	7.55
3500	Commercial with food sales	4.40
3550	Commercial with food sales; Guadalupe	4.40
4500	Commercial; other	2.95
4540	Commercial; other; Guadalupe	2.95
4550	Commercial; hospitals	2.95
5000-5999	Industrial	Varies

(f) Customers who do not purchase domestic water from the City yet discharge wastewater into the sanitary sewer system shall be assigned to an appropriate user classification by the public works department and all associated charges and conditions shall apply as if the City were the supplier of water to the customer.

(g) A delinquency fee of 1.0%, compounded monthly, will be assessed to all amounts owing on the day after the due date of the bill.

(h) A service charge of $75.00, plus charges for estimated consumption, according to the applicable user classification, will be assessed to any customer for unauthorized use of sanitary sewer system services for each occurrence, or the matter may be referred to the City Prosecutor for further action.

(Res. No. 92.40, 6-18-92; Res. No. 93.74, 11-18-93; Res. No. 94.73, 11-17-94; Res. No. 95.23, 4-27-95; Res. No. 95.63, 11-16-95; Res. No. 96.19, 3-21-96; Res. No. 96.60, 1-23-97; Res. No. 99.51, 9-16-99; Res. No. 2001.50, 9-13-01; Res. No. 2002.56, 11-14-02; Res. No. 2004.82, 9-30-04; Res. No. 2005.48, 9-15-05; Res. No. 2008.56, 7-22-08; Res. No. 2009.69, 9-10-09; Ord. No. 2010.02, 2-4-10; Res. No. 2010.55, 9-16-10; Ord. No. 2011.74, 9-22-11; Res. No. 2013.131, 11-21-13)

27-213 Sewer Development Fee

All User Classifications – Residential/Commercial/Industrial User Water Meter Size:

Meter Size (in inches)	Sewer Development Fee
5/8	$1,334.00
3/4	$2,001.00
1	$3,335.00
1 ½	$6,670.00
2	$10,672.00
3	$26,680.00
4	$53,360.00
6	$106,720.00
8	$253,460.00
10	$400,200.00

(Ord. No. 88.80, 1-26-89; Ord. No. 97.03, 7-10-97; Res. No. 2001.47, 10-11-01; Res. No. 2007.24, 5-17-07; Res. No. 2008.87, 11-6-08; Res. No. 2009.09, 1-22-09; Res. No. R2014.70, 5-12-14)

SOLID WASTE

Authorized Collectors

28-21 License bond amount $16,500.00
Per vehicle fee.....$1,000.00

Containers, Commercial Collection, Solid Waste Disposal

Any violation of Article IV - Containers $50.00
Any violation of Article V - Commercial Collection $60.00
Any violation of Article VI - Solid Waste Disposal (except for §28-51(b)(1) or (2) $50.00

(Res. No. 2004.14, 2-19-04)

28-61 Refuse Service and Recycling Rates

I. Residential Customers:

A. *Monthly charge for single-family residences and multifamily residences classified as townhouses:*

Description of Service	Effective Nov. 1, 2008	Effective Nov. 1, 2009
Once per week collection	$ 19.02	$ 19.98
Additional refuse container	$ 7.20	$ 7.56
Each additional weekly collection	$ 19.02	$ 19.98
Initial combined charge – one 90-gallon refuse and one 90-gallon recycling container for each newly constructed residence	$ 153.74	$ 161.42

B. *Monthly charge for duplex (two dwelling units with a single water meter). Each duplex has refuse and recycling containers. Refuse containers in alleys are shared.*

Description of Service	Effective Nov. 1, 2008	Effective Nov. 1, 2009
Once per week collection	$ 29.70	$ 31.18
Each additional refuse container	$ 7.20	$ 7.56

C. *Monthly charge for multifamily development without individual refuse containers (including motel units with kitchenettes):*

Description of Service	Effective Nov. 1, 2008	Effective Nov. 1, 2009
Per dwelling unit	$ 11.16	$ 11.72

II. Commercial Customers (Including Residential Multifamily Developments Serviced with Commercial Containers):

A. Monthly charges for once per week collection (base collection charge) of refuse are based on the number and size of containers, according to the following schedule:

Container Size (Cubic Yards)

Effective August 29, 2011

Number of Containers	4 cubic yards	6 cubic yards	8 cubic yards	90 gallon*	300 gallon*
1	$61.10	$67.74	$76.44	$40.08	$53.12
2	$100.50	$116.46	$130.98	$63.94	$85.08
3	$139.90	$165.18	$185.52	$87.80	$117.04
4	$179.30	$213.90	$240.06	$111.66	$149.00

*The 90 and 300-gallon containers will be provided to commercial customers requiring special access service at the discretion of the city. These containers will be collected twice weekly at the stated rate.

B. For customers that require more than four (4) containers the charge for once per week collection (base collection charge) is an additional a) $39.40 for each additional 4 cubic yard container, b) $48.72 for each additional 6 cubic yard container, c) $54.54 for each additional 8 cubic yard container, d) $23.86 for each additional 90 gallon container and e) $31.96 for each additional 300 gallon container. For customers that require more than one collection per week, the base collection charge is multiplied by the number of total collections each week.

III. Roll-Off Commercial Customers:

A. *For customers requesting city-owned containers:*

Effective November 1, 2008

Roll-Off Category	Charge Per Pull
15 cubic yards (not to exceed 4 tons)	$193.90
25 cubic yards (not to exceed 5 tons)	$238.72
40 cubic yards (not to exceed 6 tons)	$283.60

Effective November 1, 2009

Roll-Off Category	Charge Per Pull
15 cubic yards (not to exceed 4 tons)	$199.72
25 cubic yards (not to exceed 5 tons)	$245.88
40 cubic yards (not to exceed 6 tons)	$292.10

Any additional costs incurred by the city for the disposal of containers with loads in excess of above-stated weights shall be charged to the commercial roll-off customer.

B. *For customers requesting city-owned containers to load with non-collectible materials such as, dirt, rock, concrete and block:*

Effective November 1, 2008

Roll-Off Category	Charge Per Pull
10 cubic yards	$81.12

Effective November 1, 2009

Roll-Off Category	Charge Per Pull
10 cubic yards	$83.56

Customer pays full disposal cost based on tonnage and current gate rate at transfer station.

C. *For customers who utilize privately-owned compactors:*

Effective November 1, 2008

Compactor Category	Charge Per Pull
Less than 31 cubic yards	$238.72
31 to 40 cubic yards	$260.44
Over 40 cubic yards	$283.60

Effective November 1, 2009

Compactor Category	Charge Per Pull
Less than 31 cubic yards	$245.88
31 to 40 cubic yards	$268.24
Over 40 cubic yards	$292.10

D. In addition to the above rates, there shall be established:

1. A minimum charge equal to one pull once every two (2) weeks for temporary roll-offs. A temporary roll-off is a roll-off at any location for six (6) months or less.

2. A minimum charge equal to one pull once every month for permanent roll-offs. A permanent roll-off is a roll-off at the same location for more than six (6) months.

3. A refundable deposit equal to two (2) pulls for customers using city-owned containers who do not have an active utility account with the city upon initiation of roll-off service.

IV. Special Material and Special Collections

A. Effective November 1, 2008, residents seeking refuse collection service over and above the usual level provided by the city shall be charged at a rate of $118.48 per hour for time spent by city employees performing the requested service. Effective November 1, 2009, the rate shall be $122.04.

B. Collection of household appliances/white goods:

1. Residential and commercial establishments desiring to dispose of household appliances, or white goods, may do so through City solid waste services on a weekly basis. The owner/tenant is required to call the City customer relations center to request a collection, then must secure all items and materials and on the night prior to scheduled date for collection place them

out at curbside or in the alley, where solid waste services are provided for collection by the City. Residential and commercial establishments requiring this service will be charged $10.00 per appliance, plus the service call. White goods may not contain any putrescible material, and the City will refuse collection if such material is found. White goods with putrescible material shall be disposed of by the owner at the City's designated disposal site, and the owner shall be responsible to pay all applicable fees attendant thereto.

V. Miscellaneous Conditions and Restrictions

A. If a customer requires refuse collection from a combination of the above-stated collection methods, the public works director or his/her designee is authorized and directed to establish a monthly rate which will equitably reflect the schedule of charges established herein for each method of collection.

B. The public works director or his/her designee is authorized and directed to equitably recover from the customer the cost of landfill tipping fees in the excess of the monthly rate charged, when the weight of the container serviced exceeds the weight upon which the service rate is based.

C. Residential solid waste collection accounts shall not be eligible to petition the city for temporary discontinuance of refuse service.

D. In the event that a customer fails to pay for refuse service, a qualified representative of the city shall be authorized to discontinue water service or other city services to the property until such time as payment is made and arrangements approved by the internal services department to bring the account up to date.

E. Charges for refuse service to newly-constructed residential structures shall commence upon final inspection and approval of such structures by the city building inspector unless no service is required for the property.

(Res. No. 92.18, 4-9-92; Res. No. 92.79, 12-17-92; Res No. 93.50, 7-29-93; Res. No. 95.33, 6-1-95; Res. No. 97.81, 11-20-97; Res. No. 2000.38, 8-24-00; Res. No. 2001.56, 10-18-01; Res. No. 2002.55, 11-14-02; Res. No. 2004.49, 6-10-04; Res. No. 2006.78, 9-21-06; Res. No. 2008.57, 7-22-08; Ord. No. 2010.02, 2-4-10; Res. No. 2011.66, 7-7-11; Ord. No. O2014.27, 6-26-14)

STREETS AND SIDEWALKS[7]

29-19 Engineering Fees

All engineering related activities within City owned property, the public right-of-way and public utility easements shall be permitted in accordance with Section 29-19 of the City Code, the City of Tempe Public Works Department Engineering Design Criteria Manual and the City of Tempe Utility Manual. All construction within the right-of-way shall conform to the latest editions of the Maricopa Association of Governments Uniformed Standard Specifications and Details (MAG Specifications and Details), the City of Tempe Supplement to the MAG Specifications and Details, and the Tempe Traffic Barricade Manual.

An annual fee adjustment will be applied to all fees listed. Such fees will be adjusted each July 1, based on the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index-All Urban Consumers, West Region for All Items (CPI).

Engineering Plan Check Fees

Time limit of permit application: An application for a permit for any proposed work shall be valid for a period of one year from date of filing.

Exception:
Prior to the date of expiration of any application that has been approved for the issuance of permits, but for which all of the permits have not been issued, the applicant shall pay 25% of the original plan review fees, within thirty (30) days of the plan review expiration date, to extend the plan review approval for an additional six (6) months. If the 25% plan review renewal fee is not paid within thirty (30) days of expiration, and the permits are not issued on or before the six (6) month extension date, the plan review will expire and all of the permits will be voided.

1. Review of Grading, Drainage, Paving, Water and Sewer Plans (Commercial to include Multi-Family and Mixed Use)
   a. First, second and third plan review, inclusive.....$455.68/sheet/discipline
   b. Additional plan review required for fourth and subsequent reviews, changes, additions or revisions to approved plans (minimum one hour with 1/2 hour increments thereafter) $128.57/hr
   c. Plan review status meeting (used if needed for complex projects).....$535.71
   d. Expedited plan review (less than 15 days).....$911.24/sheet/discipline
   e. Drainage report review.....$591.70/report
   f. Approved plan renewal (as described above) prior to permits issued.....25% of original plan check fees

[7] Pursuant to Resolution No. 2005.45, the City Council approved annual fee adjustments based on the annual United States Department of Labor, Bureau of Labor Statistics Consumer Price Index—All Urban Consumers, West Region, effective at the beginning of each fiscal year beginning July 1, 2006.

2. Review of Grading, Drainage, Paving, Water and Sewer Plans (Detached, Single Family Dwellings and Swimming Pools)
   a. Flat fee (to include plan review and all engineering permits).....$455.68
   b. Expedited plan review (less than 15 days).....$911.24
   c. Approved plan renewal (as described above) prior to permits issued.....25% of original plan check fees

3. Review Public Utility Plan
   a. First and second plan review, inclusive..... $278.20/sheet/discipline
      - Fee shall be prorated for plan review applicable to only rehabilitation of existing systems in residential public utility easements, which would include pits and placement of new pedestals..... $150/permit submittal
   b. Third and subsequent reviews and revisions..... $165.88/sheet/discipline
   c. Expedited plan review (less than 10 days)..... $556.26/sheet/discipline
      - Fee shall be prorated for expedited plan review (less than 10 days) for rehabilitation of existing systems in residential public utility easements, which would include pits and placement of new pedestals .....$300/permit submittal
   d. Review of plans and inspection of service drops..... $55.57/service drop
   e. Expedited plan review/inspection of service drops (less than 10 days) .....$110.98/service drop
   f. Cabinet greater than 30 inches..... $177.57/cabinet/location

4. Capital Improvement Program Plans
   The Capital Improvement Program projects are subject to a two percent (2%) fee based on total project costs for engineering plan check review and engineering permits.
   a. Two-person survey crew.....$139.39/hr
   b. Three-person survey crew.....$208.97/hr

Cross reference—Apache Boulevard Redevelopment Area Fee Reduction – See Chapter 35(o), Zoning and Development Fee Schedule.

Cross reference—Storefront Improvement Program – See Chapter 35(p), Zoning and Development Fee Schedule (subsections 1 to 3 above).

Engineering Permit Inspection and Testing

All engineering permit fees for detached, single family dwellings are included in the flat fee charge for plan review.

Permits are valid for one year from date of issuance. Submittal of as-builts and an approved final inspection is required within one year from the date of permit issuance or the permits will expire.

Exception:
If the portion of the project requiring engineering permits has not been completed within one year, the applicant shall pay 25% of the permit fees to extend the permits for an additional six (6) months. If the portion of the project requiring engineering permits has not been completed prior to the initial six (6) month extension granted, the applicant shall pay an additional 100% of the original permit fees for each additional six (6) month

extension required to complete this project.

If the project requiring engineering permits has not been completed and the permits have expired, in order to resume/continue work, the applicant shall pay 100% of the original permit fees.

Testing and inspection fees shall be paid to the City at the same time a permit is issued for the work. All tests shall meet current City of Tempe standard specifications and drawings.

A base fee of $166.39 shall be paid for any materials testing incurred by a project (with the exception of single, family dwellings). This base fee is in addition to the line items needed as part of the permit process.

1. Water Inspection and Testing
   - a. Water mains $2.38/lf
   - b. Water services ..... $40.46 each
   - c. Fire hydrants ..... $75.85 each
   - d. Tap, sleeve & valve ..... $130.28 each
   - e. Pipe encasement (in 20 lf sections) ..... $23.80 each
   - f. Horizontal directional drilling pit ..... $65.29 each
   - g. Valve cluster ..... $260.41 each
   - h. Pavement cut/concrete work ..... $495.51/permit plus $3.00/sq ft if quantity exceeds 300 sq ft
   - i. Trench (no pavement cut)
     - (i) 300 sq ft or less $329.84/permit
     - (ii) Additional square feet exceeding 300 sq ft ..... $1.44/sq ft
   - j. Pothole (minimum of 5) ..... $35.65 each
   - k. Pavement resurfacing fee (refer to No. 8 under Engineering Inspection and Testing)
   - l. Over-the-counter emergency water permit (except for detached, single family dwellings) $160.75
   - m. Waterline shutdown (refer to http://www.tempe.gov/bsafety/fees/fees.htm)

2. Underground Fire Inspection and Testing
   - a. Fire sprinkler connection $1.04/lf
   - b. Horizontal directional drilling pit ..... $65.29 each
   - c. Tap, sleeve & valve ..... $130.28 each
   - d. Valve cluster ..... $260.41 each
   - e. Pothole (minimum of 5) ..... $35.65 each
   - f. Trench (no pavement cut)
     - (i) 300 sq ft or less $329.84/permit
     - (ii) Additional square feet exceeding 300 sq ft ..... $1.44/sq ft
   - g. Waterline shutdown (refer to http://www.tempe.gov/bsafety/fees/fees.htm)
   - h. Pavement cut/concrete work ..... $495.51/permit plus $3.00/sq ft if quantity exceeds 300 sq ft
   - i. Pavement resurfacing fee (refer to No. 8 under Engineering Inspection and Testing)

3. Sewer Inspection and Testing
   - a. Sewer lines $1.86/lf
   - b. Sewer services ..... $29.65 each

c. Manhole/drop connects/cleanouts ..... $146.37 each
d. Pavement cut/concrete work ..... $495.51/permit plus $3.00/sq ft if quantity exceeds 300 sq ft
e. Trench (no pavement cut)
(i) 300 sq ft or less $329.84/permit
(ii) Additional square feet exceeding 300 sq ft ..... $1.44/sq ft
f. Pavement resurfacing fee (refer to No. 8 under Engineering Inspection and Testing)
g. Pothole (minimum of 5) ..... $35.65 each
h. Over-the-counter emergency sewer permit (except for detached, single family dwellings) $160.75
i. Sewer drill tap ..... $130.28 each

4. Street Improvements Inspection and Testing
a. Curb and gutter $1.09/lf
b. Sidewalk/bike path ..... $3.77/sq ft
c. Sidewalk ramp ..... $132.19 each
d. Valley gutter/aprons ..... $168.72 each
e. Driveway/alley entrances ..... $270.54 each
f. Bus bays ..... $270.54 each
g. Bus shelters ..... $270.54 each
h. Alley grading ..... $0.52/sq yd
i. New/replacement paving ..... $5.02/sq yd
j. Overlay ..... $0.37/sq yd
k. Mill and overlay ..... $0.42/sq yd
l. Manhole adjustments ..... $37.97 each
m. Valve box adjustment ..... $37.97 each
n. Irrigation lines/ditches $3.00/lf
o. Storm drains $3.00/lf
p. Storm water retention pipes $1.29/lf
q. Drywell ..... $101.87 each
r. Headwalls ..... $56.86 each
s. Catch basins/scupper ..... $92.41 each
t. Manholes ..... $146.37 each
u. Pavement cut/concrete work ..... $495.51/permit plus $3.00/sq ft if quantity exceeds 300 sq ft
v. Trench (no pavement cut)
(i) 300 sq ft or less $329.84/permit
(ii) Additional square feet exceeding 300 sq ft ..... $1.44/sq ft
w. Survey monuments ..... $10.20 each
x. Street name sign $136.23/intersection
y. Pothole (minimum of 5) ..... $35.65 each
z. Pavement resurfacing fee (refer to No. 8 under Engineering Inspection and Testing)
aa. Over-the-counter emergency paving permit (except for detached, single family dwellings) $160.75
bb. Seal coat ..... $1.24/sq ft

5. Drainage Inspection and Testing
a. Fees for drainage permit fees see Section 12-73 of this Appendix
b. Floodplain use permits $2,142.65

c. Drywell ..... $101.87 each
d. Interceptor chamber ..... $101.87 each
e. Oil stop structure ..... $101.87 each
f. Storm drain $3.00/lf
g. Catch basin/scupper ..... $92.41 each
h. Rip rap ..... $1.04/sq ft
i. Storm water retention pipes $1.29/lf
j. Any other structure ..... $101.87 each

6. Lighting Inspection and Testing
   a. Energization-connection fee ..... $263.98 each
   b. Street lights pole inspection ..... $78.24 each
   c. Pavement cut/concrete work ..... $495.51/permit plus $3.00/sq ft if quantity exceeds 300 sq ft
   d. Trench (no pavement cut)
      (i) 300 sq ft or less $329.84/permit
      (ii) Additional square feet exceeding 300 sq ft ..... $1.44/sq ft
   e. Pothole (minimum of 5) ..... $35.65 each
   f. Horizontal directional drilling pit ..... $65.29 each
   g. Pavement resurfacing fee (refer to No. 8 under Engineering Inspection and Testing)

7. Public Utilities Inspection and Testing

   All public utilities shall secure a permit for their improvements constructed within the public right-of-way in accordance with Section 29-19 of the City Code and the City of Tempe Utility Manual. Unless otherwise prohibited by law or franchise agreement, the public utility shall deposit non-refundable fees for plan review, clerical services, and inspection. Methods "A" and "B" for installing conduit by horizontal directional drilling is described in the City of Tempe Utility Manual.

   a. Trenching (no pavement cut)
      (i) 300 sq ft or less $329.84/permit
      (ii) Additional square feet exceeding 300 sq ft ..... $1.44/sq ft
   b. Trenching (pavement cuts/concrete work)
      (i) 300 sq ft or less $495.51/permit
      (ii) Additional square feet exceeding 300 sq ft ..... $3.00/sq ft
   c. Wireless antenna $94.79/location
   d. Manhole/vaults/pedestals/access points $146.37each
   e. Semi-annual maintenance $2,217.67
   f. Semi-annual emergency permit $2,217.67
   g. Semi-annual energization permit $2,217.67
   h. Semi-annual pole inspection/replacement permit $2,217.67
   i. Semi-annual special use (gas pipeline inspection) $2,217.67
   j. Minimum utility inspection/testing fee $177.57
   k. Pothole (minimum of 5) $35.65
   l. Horizontal directional drilling pit $65.29
   m. Horizontal directional drilling (Method "A")
      (i) 300 lineal feet or less $329.84/permit
      (ii) Additional lineal feet exceeding 300 lf $1.44/lf

n. Horizontal directional drilling (Method "B")
   (i) 300 lineal feet or less $495.51/permit
   (ii) Additional lineal feet exceeding 300 lf $3.00/lf
o. Pavement resurfacing fee (refer to No. 8 under Engineering Inspection and Testing)

8. Pavement Resurfacing Fee Inspection and Testing

It is the intent of the City's pavement management program to avoid cutting of new street pavement or newly overlaid pavement. In the event that a street cut in new pavement cannot be avoided, a surcharge fee to cover damages and early deterioration will be assessed for new or resurfaced pavements less than seven years old.

a. Surcharge for cutting new or resurfaced pavement less than 3 years old.
   (i) Opening less than 9 square feet of trench $1,183.29
   (ii) Trench over 9 square feet ..... $2,958.13 for every 50 square feet of trench or fraction thereof
b. Surcharge for cutting new or resurfaced pavement more than 3 years old but less than 7 years old.
   (i) Opening less than 9 square feet of trench $591.70
   (ii) Trench over 9 square feet ..... $1,479.14 for every 50 square feet of trench or fraction thereof
c. Seal coat ..... $1.24 sq ft

9. Additional and Miscellaneous Fees Inspection and Testing
a. Miscellaneous permits not covered above – special use permit ..... $177.57 each
b. Minimum testing and inspection ..... $177.57 each
c Initial permit renewal as described above ..... 25% of permit fee
d. Second and additional permit renewal as described above ..... 100% of permit fee
e. After hours inspection/testing (minimum of two hours) ..... $229.05 per hour
f. Records (except for detached, single family dwellings) ..... 10% of total right-of-way permit fee
g. Investigation assessment ..... greater of $295.90 or double the permit fee not to exceed $2,958.13
h. Plat review for legal conformity ..... $1,552.45/per review plus $23.38/per lot
i. Miscellaneous trenching permit ..... $1.44/sq ft or $329.84 min.
j. Shoring permit for deep excavation $171.57
k. Easement dedication preparation (except for detached, single family dwellings) $160.75
l. Service line protection program (SLIPP) $12.00/mo
m. Service line protection program (SLIPP) – single line ..... service $7.00/mo
n. Service line protection program (SLIPP) – enrollment fee ..... $12.00/one time
o. Service line protection program (SLIPP) permit $156.00

10. Re-testing and Inspection

Any repetition of testing or inspection required because of inferior materials or workmanship as determined by the tests shall be at the permittee's expense and shall be paid to the City when notified by the City Engineer or the Engineer's designee in accordance with the following fee schedule:

a. Water re-test - Bacteria and chlorine ..... $159.88 per sample point
b. Inspection (charge-out rate) ..... $94.79/hour (1 hour min.)
c. Refill:

(i) Refill 6" water line.....$0.0020/lf (x2) or $6.11 min.
(ii) Refill 8" water line.....$0.0037/lf (x2) or $6.11 min.
(iii) Refill 12" water line.....$0.0076/lf (x2) or $6.11 min.

d. Pressure testing/retesting..... $381.74 each
e. Sewer and storm drain re-t.v. pipe .....$106.68/hour (1 hour min.)

Encroachments, Abandonments, and Other Activities in the Public Right-Of-Way

The City may at its sole right and option, elect to sell or abandon right-of-way for a sum equal to the present fair market value.

Unless otherwise prohibited by law, the City may at its sole right and option choose to deny any request for abandonment, encroachment or other use of the public right-of-way. In addition, the City Engineer may cancel the encroachment permit at any time.

1. Abandonment Processing Fee
A property owner, developer, or agent requesting an abandonment of public right-of-way (street, alley, or public easement used for any purpose) shall submit a non-refundable processing fee to the City Engineer.
a. Public ROW abandonment processing fee..... $887.54 each

2. Encroachments
a. Encroachment permits (non-commercial)..... $177.57 each
b. Encroachment permits (commercial) .....$710.02 ea/yr.
(includes environmental monitoring well leases)

3. Wireless Services Facilities (WSF) in the Right-of-Way
Category 1
A single wireless antenna device mounted on an existing city vertical element/pole or associated ground equipment with a wireless antenna device mounted on a third party existing vertical element/pole. Each WSF site (attachment/associated ground equipment) will be assessed fees as set forth below:
a. Per antenna location (less than 3 cu ft) $1,500/yr
b. Associated ground equipment (up to 50 cu ft)..... $1,500/yr

Category 2
WSF with antenna(s) on an existing vertical element or pole (at time of attachment) and any associated ground equipment. Each WSF site will have an antenna base fee plus a ground equipment fee (if applicable) for cubic feet of ground equipment as set for the below:
Antenna base fee $3,000/yr
+ ground equipment fee
a. Total is 1 cu. Ft. Up to 50 cu. Ft. .....Included
b. Total is 51 cu. Ft. Up to 200 cu. Ft. $6,000/yr
c. Total is 201 cu. Ft. Up to 300 cu. Ft. $9,000/yr
d. Total is 301 cu. Ft. Up to 401 cu. Ft. $12,000/yr
e. Total is 401 cu. Ft. Or more $15,000/yr

Category 3

WSF with antenna(s) mounted on a vertical element that is stealth or utilizes alternate concealment when existing vertical elements are not available, and any associated ground equipment. Each WSF site will have an antenna base fee plus a ground equipment fee (if applicable) for cubic feet of ground equipment as set forth below:

Antenna base fee $4,200/yr

+ ground equipment fee

a. Total is 1 cu. Ft. Up to 50 cu. Ft. .....Included
b. Total is 51 cu. Ft. Up to 200 cu. Ft. $6,000/yr
c. Total is 201 cu. Ft. Up to 300 cu. Ft. $9,000/yr
d. Total is 301 cu. Ft. Up to 401 cu. Ft. $12,000/yr
e. Total is 401 cu. Ft. Or more $15,000/yr

Category 4

WSF with antenna(s) on a new, (non-existing at the time of attachment) vertical element or pole that is neither stealth nor concealed in appearance and any associated ground equipment. Each WSF site will have an antenna base fee plus a ground equipment fee (if applicable) for cubic feet of ground equipment as set forth below:

Antenna base fee $5,400/yr

+ ground equipment fee

a. Total is 1 cu. Ft. Up to 50 cu. Ft. .....Included
b. Total is 51 cu. Ft. Up to 200 cu. Ft. $6,000/yr
c. Total is 201 cu. Ft. Up to 300 cu. Ft. $9,000/yr
d. Total is 301 cu. Ft. Up to 401 cu. Ft. $12,000/yr
e. Total is 401 cu. Ft. Or more $15,000/yr

(Note: This schedule is not all inclusive and other fees may apply; these fees will be adjusted annually based upon the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index-All Urban Consumers, West Region)

Licenses for Special Use

Annual licenses shall be issued for encroachments of a more permanent nature, including but not limited to, buildings and underground parking facilities that impair the City's ability to use the right-of-way. The fees for these encroachments are based upon a graduated percentage depending on the type of encroachment. The fee is also determined by the appraised value of the property and the square footage of the encroachment. They are defined as follows:

1. Obstructions/Encroachments
   a. At grade (at ground level) .....7% of appraised market value
   b. Below grade (below ground level).....7% of appraised market value
   c. Above grade (above ground, sidewalk or street) ....4% of appraised market value

2. In lieu of the above fee structure, the Public Works Director is authorized to negotiate a single payment based on the present value income stream.

Water/Sewers and Sewage Disposal

1. Fees for tapping water mains by City forces, see Section 33-37 of this Appendix.

2. Fees for sanitary sewer taps by City forces, see Section 27-173 of this Appendix.

Sale of Engineering & GIS Records

The following schedule is established to set a standard cost for the selling of City Engineering and GIS mapping records:

1. Plots – sizes 8 ½" x 11" (letter) and 11" x 17" (tabloid)
   a. Two (2) or less plots (non-commercial use) ..... no charge
   b. Three (3) or more plots (non-commercial use) ..... $1.29 each
   c. Any number of plots (commercial use) ..... $1.29 each
   d. As-built plan sheet ..... $1.29 each

2. Plots – larger than 11" x 17", up to 36" wide
   a. City map of landbase, survey, water, sewer, etc. ..... $12.01 each
   b. Quarter section map of landbase, aerial, or utilities ..... $12.01 each

   c. Conversion of paper map to mylar ..... $4. 50/sq ft
   d. As-built plan sheet ..... $12.01 each
   e. Custom plot, each ..... $12.01 plus $6. 11/lf or fraction of paper over three (3) feet

3. Digital data
   a. Quarter section in MicroStation DGN format
      (i) Landbase ..... $355.09 each
      (ii) Single utility (sewer, water, drainage or improvements) ..... $118.44 each
      (iii) Landbase and all utilities ..... $650.83 each
   b. Quarter section aerial in Intergraph COT format ..... $35.65 each
   c. As-built plan sheet image in B&W TIFF format ..... $1.29 each
   d. Custom output in MicroStation DGN format
      (i) Setup for location ..... $118.44 per area, per occurrence plus $6.11 per vertex over eight (8) fence vertices
      (ii) Landbase ..... $1.86 per 10,000 square feet or fraction
      (iii) Single utility ..... $0.77 per 10,000 square feet or fraction
      (iv) Landbase and all utilities..... $3.31 per 10,000 square feet or fraction
      (v) Minimum purchase of custom output $236.76
   e. Format translation of city-provided data files – prices in addition to source data files
      (i) Setup for translation ..... $59.24 per occurrence
      (ii) MicroStation DGN file to AutoCAD DWG or DXF file ..... $23. 80/DWG or DXF file
      (iii) Intergraph COT file to TIFF or JPEG file ..... $23. 80/TIFF or JPEG file
      (iv) Minimum purchase of translation services $118.44
      Translation services are performed using default settings of translation software.
   f. Download information to a CD $12.01/each
   g. Tempe Supplement to the M.A.G. Uniform Standard Details and Specifications for Public Works Construction..... $166.39

4. Conditions and Restrictions
    a. All commercial orders and digital data orders will be required to document purpose of use.
    b. Plotting orders in excess of $25.00 and digital data orders will require full pre-payment before order is processed.
    c. Digital data will be provided on city-issued media only.
    d. All orders and payments must be done in-person only.

(Res. No. 92.33, 6-18-92; Res. No. 99.30, 11-18-99; Res. No. 2000.44, 6-15-00; Res. No. 2001.37, 7-19-01; Res. No. 2002.03, 1-17-02; Res. No. 2005.45, 10-20-05; Res. No. 2008.26, 5-1-08; Res. No. 2008.89, 11-6-08; Res. No. 2008.90, 1-8-09; Res. No. 2009.41, 12-10-09; Res. No. 2009.57, 6-11-09; Ord. No. 2010.02, 2-4-10; Res. No. 2010.48, 5-20-10; Res. No. 2011.51, 6-16-11; Res. No. 2011.75, 8-18-11, Res. No. 2013.51, 5-9-13; Res. No. 2013.67, 6-13-13; Res. No. R2015.05, 1-8-15)

TELECOMMUNICATIONS SERVICE PROVIDERS

31A-11 License or Franchise Application

1. All applications for new or renewal licenses, as defined by A.R.S. § 9-582(A)(2), shall be accompanied by a Two Thousand Dollar ($2,000.00) non-refundable fee for the administrative costs of processing the application and license.

2. As authorized by A.R.S. §§ 9-583(C) and 9-582(A)(4) and Tempe City Code Sec. 31A-21, in addition to all other permit fees authorized by city ordinance or resolution, all interstate license holders shall pay to the City an annual fee of Two Dollars and Eight Cents ($2.08) per lineal foot of right of way occupied. Such rate per linear foot shall be increased in any calendar year hereafter by the increase in the average consumer price index as published by the United States Department of Labor, Bureau of Labor Statistics. The City shall calculate the annual footage fee using as the number of linear feet, the total amount of linear feet installed less any footage removed or abandoned as provided in the license agreement.

3. The City may receive in-kind facilities from interstate license holders. Any in-kind facilities provided to the City by the license holder shall remain in the possession and ownership of the City after the term of the license expires. The value of the in-kind benefits shall be offset as required by A.R.S. § 9-582(D).

4. The fees referenced in Sections 1 and 2 above shall apply to all license applications submitted to the City after the effective date of this Resolution, and to all licenses granted by the City after the effective date of this Resolution.

(Res. No. 2000.12, 02-24-00; Res. No. 2006.77, 9-21-06)

TOWING FROM PRIVATE PROPERTY

32-2 Towing Fees For Private Towing Companies
(Maximum fees)

Towing Charge (gross weight of <10,000 lbs.).....$ 120.00
Towing Charge (gross weight 10,000-26,000 lbs.).....$ 200.00
Towing Charge (gross weight >26,000 lbs.).....$ 280.00

After Business Hours Release Fee (vehicles released Monday through Friday between 5:00 p.m. and 8:00 a.m., weekends and state holidays).....$ 20.00
Service calls not resulting in the towing of a vehicle ..... No charge
Storage Fee .....$ 15.00 per 24 hours

No additional charges will be added for the claimant to access the vehicle during normal business hours for registration, personal property in the vehicle or to check on the vehicle condition.

(Res. 1771, 11-18-82; Res. No. 2007.01, 1-4-07; Res. No. 2009.39, 5-28-09)

WATER

33-37 Tap and Water Meter Installation Fees

The following fee structure shall be established for tapping water mains, installing water connections, water meters and water meter boxes.

METER SIZE	TAP	METER	TOTAL
5/8"	$ 570.00	$ 46.50	$ 616.50
3/4"	570.00	63.50	633.50
1.0"	626.00	116.00	742.00
1.5"	1,030.00	206.50	1,236.50
2.0"	1,359.00	269.00	1,628.00
3.0"	Cost: $ 8,250.00 deposit required		
4.0"	Cost: $ 8,250.00 deposit required		
6.0"	Cost: $ 8,250.00 deposit required		
8.0"	Cost: $ 9,350.00 deposit required		

33-56 Water Rates

1. (a) Domestic water may be supplied to units of service at the following rates. Each meter shall have a separate water connection from the main. The continuous flow rate shall not exceed fifty percent (50%) of the maximum flow rate for each meter.

The following fee structure shall be established for water service rates effective January 1, 2014:

METER SIZE	MONTHLY SERVICE CHARGE 1	MONTHLY SERVICE CHARGE 2
5/8"	$ 11.50	$ 14.95
3/4"	15.70	20.41
1.0"	23.50	30.55
1.5"	41.60	54.08
2.0"	67.90	88.27
3.0"	154.00	200.20
4.0"	302.00	392.60
6.0"	599.00	778.70
8.0"	1,400.00	1,820.00
1.0" installed to accommodate sprinklers	11.50	14.95

Minimum monthly service charge 1 = Inside Tempe city limits and the limits of the Town of Guadalupe.
Minimum monthly service charge 2 = Outside Tempe city limits and the limits of the Town of Guadalupe.

(b) The above specified service charges for domestic water shall be paid each month for which a city meter is connected to a water line, whether any water is used on the premises or not.

(c) The city shall have the privilege and option of metering any unit of service not now metered, and when so metered, the service charge and consumption charge provided in this section shall apply.

(d) An administrative turn-on fee of $15.00 will be charged to establish each utility service account. If it is necessary to establish service after 5:00 p.m. Monday through Friday, or weekend or holiday service, a turn-on fee of $35.00 will be assessed.

(e) A service charge of $75.00, plus charges for estimated consumption, according to the applicable consumption rate schedule, will be assessed to any customer for unauthorized use of water services, for each occurrence.

Unauthorized use shall mean the taking of service by (a) turning the service on without authority, or (b) by connecting directly into service or hydrant without a meter, or (c) willfully modifying the meter or service apparatus so as to cause loss or reduction in consumption registration.

2. (a) The following fee structure shall be established for the single family residential consumption rates for water effective January 1, 2014:

CONSUMPTION	INSIDE TEMPE AND GUADALUPE (PER 1,000 GALLONS)	OUTSIDE TEMPE AND GUADALUPE (PER 1,000 GALLONS)
First 8,000 gallons	$ 2.00	$ 2.60
Next 7,000 gallons	2.50	3.25
Next 10,000 gallons	3.13	4.06
Over 25,000 gallons	3.92	5.09

The following fee structure shall be established for the non-single family residential consumption rates for water effective January 1, 2014:

CUSTOMER CLASSIFICATION	INSIDE TEMPE AND GUADALUPE (PER 1,000 GALLONS)	OUTSIDE TEMPE AND GUADALUPE (PER 1,000 GALLONS)
Multifamily	$ 2.14	$ 2.78
Commercial	2.43	3.15
Construction	2.73	3.54
Industrial	2.18	2.83
Landscaping	2.73	3.54

(b) Applicable taxes or governmental impositions which are assessed on water sales shall be added.

(c) Pursuant to A.R.S. § 42-5302, a state water qualify fee of $0.0065 per thousand gallons shall be added.

3. The following charges will be assessed for delinquent accounts and miscellaneous services:

(a) A delinquency fee of 1.0% will be assessed to all amounts owing on the day after the due date of the bill.

(b) In the event that a service suspension notice is mailed or delivered or service is re-established which had been disconnected, a $15.00 charge will be assessed. Re-establishing service after 5:00 p.m. Monday through Friday, or weekend or holiday service will be assessed a charge of $35.00.

(c) A $15.00 charge will be assessed when a check is returned unpaid to the city by the bank. If a returned check was for payment of a delinquent account upon which a notice of service suspension has been served, service will be discontinued without further notice. The customer will be required to pay all amounts due, including the present month's bill, any additional deposits and applicable service reinstatement charges. Payment must be by cash, cashier's check or money order. Water service will be restored after payment is received.

(d) The finance and technology director, or his designee, shall have the authority to establish rules and regulations for handling medical and financial hardship accounts. Such rules and regulations may provide for waiver of fees set forth herein or alternate payment methods.

(Res. No. 92.41, 6-18-92; Res. No. 93.73, 11-18-93; Res. No. 96.19, 3-21-96; Res. No. 96.76, 1-23-97; Res. No. 99.30, 11-18-99; Res. No. 2001.49, 9-13-01; Res. No. 2002.56, 11-14-02; Res. No. 2004.81, 9-30-04; Res. No. 2005.47, 9-15-05; Res. No. 2008.55, 7-22-08; Res. No. 2009.68, 9-10-09; Ord. No. 2010.02, 2-4-10; 2010.54, 9-16-10; Ord. No. 2011.73, 9-22-11; Res. No. 2012-122, 11-15-12; Res. No. 2013.130, 11-21-13)

33-74 Irrigation Rates

(a) The following fee structure shall be established for irrigation service rates effective November 1, 2005:

PARCEL AREA (SQUARE FEET)	SEMI-ANNUAL FEE
Up to 13,068	$152.62
13,069 to 17,424	$203.22
17,425 to 21,780	$253.84
21,781 to 26,136	$304.45
26,137 to 30,492	$354.45
30,493 to 34,848	$405.68
34,849 plus	$405.68 plus $50.71 per each 4,355 square foot increment or portion thereof in excess of 34,848 square feet

(b) The costs associated with the irrigation of city facilities will be billed at a rate equal to the annual job cost charge for irrigation services.

(c) An administrative fee of $15.00 will be charged to establish service.

(d) A service charge of $75.00 will be assessed to any customer for unauthorized use of irrigation services, for each occurrence. In addition, charges for water delivered will be assessed.

(e) Applicable taxes or governmental impositions which are assessed on water sales shall be added.

(Res. No. 92.42, 6-18-92; Res. No. 93.75, 11-18-93; Res. No. 94.74, 11-17-94; Res. No. 95.64, 11-16-95; Res. No. 97.32, 6-12-97; Res. No. 99.52, 9-16-99; Res. No. 2004.80, 9-30-04; Res. No. 2005.49, 9-15-05)

33-93 Water Development Fees

All User Classifications – Residential/Commercial/Industrial User Water Meter Size:

Meter Size (in inches)	Water Development Fee
5/8	$1,664.00
3/4	$2,496.00
1	$4,160.00
1 ½	$8,320.00
2	$13,312.00
3	$33,280.00
4	$66,560.00
6	$133,120.00
8	$316,160.00
10	$449,200.00

(Ord. No. 88.81, 1-26-89; Ord. No. 97.02, 7-10-97; Res. No. 2001.48, 10-11-01; Res. No. 2007.24, 5-17-07; Res. No. 2008.87, 11-6-08; Res. No. 2009.09, 1-22-09; Res. No. R2014.70, 5-12-14)

ZONING

Chapter 35 - Zoning and Development Fees[8]

FEE SCHEDULE

a.	Preliminary Review Process:	
	Single Family	$122.00
	All Others	$366.00
b.	Administrative Applications:	$366.00 each
	Ordinance Interpretations	
	Zoning Administrator Opinions	
	Shared Parking Application	
	Time Extensions	
	Group/Adult Home Verification Letter	
	Covenant, Conditions & Restrictions (CC&R) Review	
	Single Family Dwelling Units	$366.00 each
	All Other Uses	$366.00 each
c.	Variances:	
	Single Family Dwelling Units	$425.00 per lot, including use permits
	All Other Uses	$1,218.00 each
	Unauthorized Construction/Installation	Twice the normal fees
d.	Use Permits:	
	Community Garden / Animals	$53.00 each
	Single Family Dwelling Units	$425.00 per lot, including variances
	All Other Uses	$1,218.00 each
	Use Permit Transfer	See Administrative Applications
	Unauthorized Activity	Twice the normal fees

[8] Pursuant to Resolution No. 2005.26, the City Council approved annual fee adjustments based on the annual United States Department of Labor, Bureau of Labor Statistics Consumer Price Index—All Urban Consumers, West Region, effective at the beginning of each fiscal year beginning July 1, 2006.

e.	Zoning Code Amendments:	
	Map	$2,437.00 per classification + $122.00 per net acre*
	Text	$2,437.00
		*Rounded to the nearest whole acre
f.	Planned Area Development Overlays	$3,047.00 for under 1 acre
		$6,093.00 for 1 acre and over
	Amendments	$1,524.00 for under 1 acre
		$3,047.00 for 1 acre and over
g.	Subdivisions, Including Condominiums:	
	Preliminary/Finals/Amendment	$2,437.00 + $25.00 per lot or condo unit
	Engineering Plat Review Fee	Refer to City Code, Appendix A, Sec. 29-19.9(h)
	Lot Splits/Lot Line Adjustments	See Administrative Applications
h.	Continuance at Applicant's Request After Legal Advertising and Public Notice	$122.00
i.	Development Plan Review:	
	Complete – Building, Site, Landscape, Signs	$1,829.00 for 5 acres or less $2,437.00 over 5 acres
	Remodel/Modification	$610.00
	Repaint or Minor Elevation Modification	$244.00
	Separate Landscape Plan	$244.00
	Sign Package	$366.00
	Separate Signs	$366.00
	Reconsideration	Same as original fee
	Unauthorized Activity	Twice the normal fees
j.	Appeals	$366.00
	Tempe Residential Property Owner Request	$115.00

k.	Sign Permits: One Sign Each Additional Sign Unauthorized Installation of Sign(s) Grand Openings, Going out of Business, Significant Event, Leasing Banner Way-Finding Sign Permit	Fees include Plan Review, the initial Inspection and one Re-inspection $244.00 $92.00 Twice the normal fees $122.00 $27.00
l.	General Plan Amendments: <u>Amendment</u> Text Change Map Change <u>Major Amendment</u> Map Change	 $2,437.00 $2,437.00+ $122.00 per gross acre $6,093.00 + $122.00 per gross acre
m.	Public Notice Signs: Neighborhood Meeting Sign	 $17.00 (includes one sign and two stakes for self posting)
n.	Zoning Verification Letter	$306.00
o.	Development fees within the Apache Boulevard Redevelopment Area may be reduced up to 50% for the following listed uses, when authorized by the Community Development Director or designee and accepted by the authorized department director: • Neighborhood services not already provided within the Apache Boulevard Redevelopment Area. • Workforce housing, provided that at least 20% of the housing units developed for, offered to, and leased or sold to households whose gross annual income is greater than 100% of the AMI but does not exceed 120% AMI, or 10% of the housing units developed for, offered to, and leased or sold to households whose gross annual income is greater than 80% AMI but does not exceed 100%.	

p.	Waiver of commercial development fees under the Storefront Improvement Program. • Zoning, building, and engineering permit and plan review fees for improvements to commercial buildings approved under the Storefront Improvement Program (SIP) will be waived for applicants participating in the program. This waiver includes all fees for alterations and improvements for such items as identified in the Storefront Improvement Program guidelines and cross referenced fees herein. • The waiver for each project is 100% of the total fee amount.

(Res. No. 92.34, 6-18-92; Res. No. 93.34. 5-20-93; Res. No. 94.05, 2-17-94; Res. No. 95.69, 12-14-95; Res. No. 96.75, 11-14-96; Res. No. 97.51, 9-11-97; Res. No. 97.52, 9-11-97; Res. No. 97.58; 9-18-97; Res. No. 99.07, 2-11-99; Res. No. 2001.20, 5-10-01; Res. No. 2002.02, 2-7-02; Res. No. 2002.40, 8-1-02; Res. No. 2004.64, 1-20-05; Res. No. 2005.26, 6-16-05; Res. No. 2006.53, 6-29-06; Res. No. 2007.15, 3-22-07; Res. No. 2007.22, 5-3-07; Res. No. 2009.57, 6-11-09; Ord. No. 2010.02, 2-4-10; Res. No. 2010.31, 4-22-10; Res. No. 2011.62, 8-18-11; Res. No. 2013.51, 5-9-13; Res. No. R2014.146, 12-4-14)

ORDINANCE AND CHARTER TABLES

This table gives the location within this Code of those ordinances adopted since the 1967 Code which are included herein. Ordinances adopted prior to such date were incorporated into the 1967 Code. Ordinances not listed herein have been omitted as repealed, superseded, or not of a general and permanent nature.

Ordinance Number	Adoption Date	Subject or Section	Section this Code
371.5	01-10-85		7-43 et seq.
371.6	11-14-85		7-64(a)
381			30-1
391.3	08-16-84	1	4-5
412.7	08-16-84		6-22
412.8	09-12-81		6-30,6-46
420.2	03-27-80	1	17-7
430.7	05-24-84		33-74
430.8	06-20-85	1	33-74
455.6	08-16-84	4	10-5(f)
455.11	08-16-84	3	10-5
471.10	02-14-85	1	8-457
471.11	09-12-85	1	8-404(a) et seq.
		3	8-404(230-2) et seq.
		4	8-451
508.2	04-12-84		1-7
566.13	05-10-84		3-43
569.19	03-15-84	1	16-23, 16-32
569.21	01-10-85	1	16-16 et seq.
		1,2	16-18
569.22	11-14-85	1	16-16
569.23	11-14-85		16-18(13)
624.1	01-10-85	1	33-75
624.10A	02-23-84		33-18, 33-56
624.11	01-10-85	1	33-18 et seq.
		2	33-37
624.12	09-26-85		27-42
624.13	09-26-85		33-56
636			26-2
637.6	12-13-84	1	23-36—23-44

Ordinance Number	Adoption Date	Subject or Section	Section this Code
		2	23-56—23-58
637.7	02-28-85		23-45
641.11	02-14-85	1	8-743
633.9	09-27-84	1	11-3
696.3	06-20-85		20-8
743.2	06-06-85	1	16-132
744.2	11-14-85		22-9
756.14	06-21-84	1	8-300(405) et seq.
756.15	07-12-84		8-300(2405)
756.16	02-14-85	1,2	8-300(310)
		2	8-600(Table 3-A)
808.9001	02-08-90		1-7
828.3	09-27-84	1	12-17
		2	12-18
		3—5	12-19
		6	12-20
861.1	10-25-84		2-147
936.6A	03-15-84		27-103, 27-104
936.7	06-06-85		27-103, 27-104
937.5	03-15-84		33-93, 33-94
937.6	06-06-85		33-93, 33-94
992.2	01-24-85	1	32-9
992.3	03-28-85		32-6
999.2	01-24-85	1	32-2
1079	06-21-84	1	2-191
		2—4	2-192
		5—7	2-193—2-195
1101	08-16-84	1	2-162
		2	2-163
		3	2-165
1145	05-16-85	1(2-12)—(2-15)	2-26—2-29
86.02	01-09-86	1	18-7(b)
86.06	01-30-86		22-40—22-47
86.09	02-13-86		22-11
86.10	02-27-86	1	11-6
86.11	02-27-86		22-60—22-70
86.12	03-20-86		3-17

Ordinance Number	Adoption Date	Subject or Section	Section this Code
86.23	03-07-86		Adopting Ordinance, p.vii
86.29	04-24-86	1	23-46
86.31	06-19-86	1	33-37(b)
86.34	05-15-86	1	23-47
86.45	7-10-86		19-1 et seq.
86.46	06-19-86	1	20-8
86.47	07-10-86	2	28-1 et seq.
86.48	07-24-86		22-12
86.52	07-24-86	1	11-1—11-9
86.54	08-28-86	1	8-704(a) et seq.
86.58	09-25-86	1	8-300(a)
		2 Rpld	8-300(405) et seq.
		3	8-300(505) et seq.
		4	8-300(Table No.3A)
			(406) et seq.
		5	8-600(a)
		6	8-600(710(h) et seq.
86.59	09-25-86	1	8-300 (3802)
86.63	10-09-86		27-103, 27-104
86.64	10-09-86		33-93, 33-94
86.68	09-25-86		7-101—7-106
86.72	11-13-86	1	8-300(1602),
			8-300(3802(d),(e))
86.73	11-13-86	1	16-141—16-153
86.74	12-11-86	1	31-16—31-21
86.75.1	01-12-87		24-16—24-28 et seq.
86.77	01-29-87		4-5
87.01	01-12-87	1	14-16
		2 Rpld	14-18—14-20
		3 Rpld	14-41(10.210)et seq.
		4 Added	14-41
			(19.306(a)) et seq.
87.10	04-23-87	5 Added	22-91—22-94
87.16	04-30-87		21-6,21-7
87.17	04-23-87	1(16-1)	16-1 et seq.
87.17	04-23-87	3 Rpld	16-16—16-46 et seq.

Ordinance Number	Adoption Date	Subject or Section	Section this Code
		5 Rnmb	16-86—16-96
			as 16-181 et seq.
87.20	07-09-87		23-48
87.21	07-09-87		6-31
87.24	01-14-88		7-1—7-4 et seq.
87.25	09-10-87		12-16—12-35
87.30	08-13-87	1	19-63
87.31	07-23-87		21-4(23),(24)
87.37	08-27-87		8-300(1720) et seq.
87.38	08-27-87		6-21
87.45	09-10-87	1	19-63
87.49	10-22-87	1	5-1
87.57	01-28-88	33-100	33-100 et seq.
88.05	02-11-88		7-61—7-65
88.06	02-11-88		19-4
88.13	06-09-88		19-50
88.16	02-25-88		22-41(b)
88.17	02-25-88		22-44(a)(2)
88.18	02-25-88		22-41(g)
88.19	02-25-88		22-44(a)(3)
88.20	02-25-88		22-44(a)(5)
88.21	02-25-88		22-48, 22-49
88.22	04-14-88	1	21-4(20)
		2(21-8)	21-1
			21-5
88.23	04-14-88	1	22-60(b)
		2	22-61(c),(d)
88.28	03-31-88	1	22-4(h)
		2	22-44(a)(3)
88.32	04-28-88	1(1),(2)	16-100 et seq.
		5 Rnmb	16-181—16-191
			as 16A-1—16A-11
		Rnmb	16-206—16-209
			as 16A-26—16A-29
		Rnmb	16-226—16-231
			as 16A-40—16A-45
		Rnmb	16-242—16-254

Ordinance Number	Adoption Date	Subject or Section	Section this Code
			as 16A-56—16A-68
88.33	04-28-88	1	16-447
		2	16-447.1
88.36	06-09-88		22-44
88.38	05-26-88		17-23, 17-29
88.40	05-26-88		8-704(d) et seq.
88.42	06-30-88	1	7-1
		2	7-11(d)
88.54	08-11-88		2-132
88.55	11-10-88	1	26-1—26-4
88.57	09-08-88	1	8-404(a)
		2 Rpld	8-404 (220-2) et seq.
		3 Added	8-404 (Art.100) et seq.
		4	8-404 (110-16) et seq.
		5 Rpld	8-426—8-439 et seq.
		6 Added	8-426, 8-427
		7	8-401—8-403
88.62	09-08-88		2-200 to 2-204
88.80	01-26-89		27-103, 27-104
88.81	01-26-89		33-93, 33-94
88.82	01-26-89	1	16A-41
88.85	01-12-89		25-120—25-126
89.06	08-10-89		24-39
89.11	04-13-89	1	19-63
89.20	04-27-89	1	2-147—2-156
89.21	04-27-89		16A-2
89.27	06-29-89		28-71—28-76
89.42	07-27-89		22-1
89.46	08-10-89	1	8-216—8-223
		2	8-236—8-243
		3	8-271—8-278
		4	8-451—8-453
		5 Rpld	8-427

Ordinance Number	Adoption Date	Subject or Section	Section this Code
89.51	09-28-89	1	19-63(b)
89.52	09-28-89	19-96	19-169 et seq.
89.54	10-12-89		16-300, 16-310
89.60	12-14-89	1	8-300(a)
		2 Rpld	8-300 (106) et seq.
		3	8-300 (303(d),(f)et seq.
		4	8-300 (303)a)) et seq.
		5 Rpld	8-300 (307(c)3.)et seq.
		6	8-600(a)
		7 Rpld	8-600 (106) et seq.
		8	8-600(App.B, Chs.21—23)
		9	8-600 (510(a)) et seq.
89.61	11-09-89		17-25
89.62	01-11-90	1	14-16
		2	14-41(10.307) 14-41 (App. Ch.III-D)
		3 Rpld	14-41(10.306) et seq.
		4	14-41(12.104) (12.105)
		5	14-41(4.01) et seq.
89.64	12-14-89		16A-3,16A-4
89.65	01-11-90	1	21-4(4),(7)
		2	21-4(25)—(27)
89.66	01-11-90	1	22-60(a),(b),(d)
		2	22-60(e),(f)
		3	22-61(e)
90.02	02-22-90		25-131—25-145

Ordinance Number	Adoption Date	Subject or Section	Section this Code
90.13	04-12-90	Wastewater Pretreatment Enforcement Guidelines	27-65, 27-66
90.16	03-29-90	Deleted	16-480(d)
		Reduction of monthly interest rates on delinquent accounts	16-540(a)
90.18	04-12-90	1	19-18
90.22	05-24-90	1	16A-1
		2	16A-3,16A-4
90.24	07-12-90		4-3(a)(2), 4-4(a),(f),4-5(1)
90.25	07-12-90	City tax code 1990 amendments	16-100 et seq.
90.28	07-12-90		2-146
90.34	07-12-90	1	17-1
		2	17-2(b)
		3	17-26
		4	17-33
90.40	08-09-90	1	8-704(a)
		2	8-704(401(a)) et seq.
		3 Rpld	8-704(201(c)) et seq.
		4	8-704(312) et seq.
		5	8-600(710(h))
90.43	09-27-90		8-704(App.§E25)
90.50	11-29-90	Cable franchise	10-1 et seq.
91.06	02-28-91	Plumbing Code fees	8-704, 8-705
91.14	04-25-91	Water devel. fees	33-92, 33-93
91.15	04-25-91	Sewer devel. fees	27-102, 27-103
91.16	04-29-91	After-hours licenses	16A-75 to 16A-90
91.17	05-09-91	Electric code amnds.	8-404, 8-426
91.18	07-25-91	Procuremnt code amnds.	2-146, 2-147, 2-150
91.21	06-27-91	Bldg permits/fees	8-300, 8-426, 8-600, 8-744
91.22	06-27-91	Bicycle comm. amnds.	7-61—7-65
91.26	08-22-91	After-hours amnds.	16A-75
91.27	09-12-91	Alarm regulations	22-75—22-82
91.33	10-17-91	Cable TV franchise	10-1 et seq.

Ordinance Number	Adoption Date	Subject or Section	Section this Code
91.34	10-10-91	Vending regulations	24-24—24-30, 24-37, 24-38, 24-40
91.38	11-14-91	Boom box regulations	19-51
91.39	11-14-91	Cruising regulations	19-52
91.40	12-12-91	Massage license amnds.	17-22, 17-29
91.45	01-16-92	Teletrack betting	16A-100—16A-109
91.46	01-23-92	Water convervation	33-120—33-133
92.02	02-13-92	RV parking	19-134, 19-139
92.04	03-12-92	RV parking	19-134, 19-139
92.07	05-14-92	Abandoned property,dispsl	26-53.1
92.09	06-18-92	Water connection fees	33-37
92.13	06-18-92	Teletrack betting amnds.	16A-107.1
92.27	09-10-92	Water conservation reports	33-140, 33-141
92.32	07-30-92	City mgr. signing contr.	2-2
92.35	08-20-92	U-turns	19-53
92.36	08-20-92	Cruising amnds.	19-52
92.38	08-20-92	Bicycle regis. fees	7-14
92.39	07-30-92	Public urination,defecation	22-13
92.41	08-27-92	City sponsorhip review comm.	2-205—2-212
92.45	11-12-92	Amended criminal & civil penalties	6-22
92.48	11-12-92	Deleted colon irrigation	17-1, 17-2
92.52	01-14-93	Dirt, rock & construction mat'l	28-1, 28-51
93.03	02-11-93	Storm water retention	12-56, 12-57, 12-71, 12-73, 12-86, 12-87
93.04	02-11-93	Shielding low pressure sodium lamps	25-137
93.06	02-11-93	Written permission to carry firearm	22-14
93.07	03-18-93	Parking of common carriers at night	19-136
93.13	04-08-93	Repealed billboard provisions	3-36—3-43
93.14	05-13-93	Prohibiting graffiti	21-4
93.15	06-10-93	Pretreatment program compliance	27-64, 27-76, 27-77, 27-79
93.18	06-24-93	Amd fees: building, electrical, mechanical and plumbing codes	8-300 (Table No. 3-A) 8-426 (Table No. 3-A) 8-600 (Table No. 3-A) 8-768 (Table No. 3-A)
93.24	08-26-93	Excessive false alarms, fee, revocation of the alarm permit, appeals	22-77, 22-77.1, 22-77.2 22-77.3, 22-78 & 22-81

Ordinance Number	Adoption Date	Subject or Section	Section this Code
93.29	08-12-93	Prohibits parking of inoperable or unregistered vehicles on streets and rights-of-way	19-100
93.31	08-26-93	Terms of sidewalk vending committee	24-27(a)
93.32	9-9-93	Neighborhood enhancement, increasing fines	22-67
93.37	10-14-93	Increasing privilege license and use taxes to 1.2%	16-405,16-410,16-415,16-416, 16-417, 6-425, 16-430, 16-435, 16-444, 16-445, 16-450, 16-455, 16-460, 16-470, 16-475,16-480, 16-610
93.40	11-18-93	Sewer pretreatment regulations	27-1 to 27-214
93.41	12-9-93	Tobacco sales through vending machines regulated, minors	22-51
93.42	1-13-94	Abatement of nuisances by city, expenses	21-6
93.43	1-13-94	Curfew amendments	22-8
94.02	2-10-94	Smoking ordinance amendments	22-42, 22-44, 22-50
94.14	6-30-94	City court judges and hearing officers	2-26 to 2-29
94.17	6-9-94	Design review board amendments	11-7
94.19	6-30-94	Increasing application fee for privilege license tax	16-300
94.20	7-14-94	Adopting 1991 Uniform Mechanical Code and amendments thereto	8-600 et seq.
94.21	8-11-94	Adopting 1991 Uniform Plumbing Code and amendments thereto	8-704 et seq.
94.22	7-14-94	Judges to serve as juvenile hearing officers	2-27 Ed. Note
94.29	12-8-94	Regulating large parties, gatherings and events	5-30 et seq.
94.33	12-8-94	Civil traffic cases, default fee	19-2
94.34	5-11-95	Bicycle registration, regulations	7-1 et seq.
94.35	4-13-95	Solid waste and refuse collection regulations	28-1 et seq.

Ordinance Number	Adoption Date	Subject or Section	Section this Code
95.03	1-12-95	City tax code 1995 amendments	16-100 et seq
95.05	1-12-95	Uniform Building Code, automatic fire sprinkler requirements	8-300
95.11	4-13-95	Penalties, civil penalties, default fee	1-7, 19-2
95.12	3-30-95	Fair housing regulations	22-91 to 22-94
95.13	4-13-95	Nonconviction criminal history for certain volunteers	2-132
95.14	4-27-94	Absentee ballots in city elections	13-8
95.15	4-27-95	Tempe aviation commission	2-215 et seq.
95.17	5-11-95	Curfew for minors	22-8
95.18	6-1-95	Human relations commission	2-221 et seq
95.19	7-20-95	Backflow prevention program	33-101 to 33-107
95.21	7-20-95	Tempe municipal arts commission	2-202, 2-204
95.22	7-20-95	Administration of Tempe Performing Arts Center	2-131
95.29	7-20-95	Factory-built buildings on-site permit requirements	8-300
95.33	9-21-95	Signage parking restrictions	19-1, 19-96, 19-132
95.34	10-12-95	Speed regulations	19-63
95.35	11-9-95	Historic preservation regulations	14A-1 et seq.
95.36	12-21-95	Teen dance halls	16A-140 to 16A-155
95.38	11-9-95	Court user charge and enhancement fund	2-30
95.48	12-14-95	Escorts, escort bureaus and introductory services	16A-56 to 16A-70
95.49	12-14-95	Adult-oriented businesses	16A-112 to 16A-135
95.50	1-11-96	Exempting Super Bowl XXX and NFL Experience from privilege taxes	16-410
96.05	6-6-96	Massage therapists and establishments	17-1, 17-2, 17-4, 17-5, 17-6, 17-21, 17-22, 17-23, 17-24, 17-24.1, 17-25, 17-26, 17-27, 17-28, 17-29, 17-30, 17-31, 17-32

Ordinance Number	Adoption Date	Subject or Section	Section this Code
96.07	4-25-96	Unleased dogs within off-leash areas	6-30
96.09	6-20-96	Civil fines and penalties	22-67
96.13	6-6-96	Claims and demands against the city	2-161 to 2-165
96.16	8-29-96	Golf advisory committee	2-235 to 2-240
96.24	8-29-96	Unfinished buildings or structures	8-300
96.27	8-29-96	Compact discs exemption	16A-2
96.28	8-29-96	Transportation commission	2-245 to 2-250
96.39	10-24-96	Municipal arts commission	2-202, 2-204
96.40	10-24-96	Name change development services dept.; establishment of community services dept.	2-131, 2-133
96.41	10-24-96	Increasing privilege license and use taxes to 1.7%	16-405, 16-410, 16-415, 16-416, 16-417, 16-425, 16-430, 16-435, 16-444, 16-445, 16-450, 16-455, 16-460, 16-470, 16-475, 16-480, 16-610
96.42	12-12-96	Adopting taxpayer bill of rights amendments to tax code	16-100, 16-500 et seq.
96.43	12-12-96	Adopting the 1996 amendments to tax code	16-100 et seq.
96.45	12-12-96	Commission on disability concerns	2-265 to 2-270
96.47	11-14-96	Exemption from reporting requirements	16A-3
96.49	12-12-96	Rio Salado citizen advisory commission	2-275 to 2-280
96.50	1-9-97	Powers and duties of historical museum advisory board	2-195
97.02	7-10-97	Water development fees	33-93, 33-94
97.03	7-10-97	Sewer development fees	27-213, 27-214
97.04	7-10-97	Residential development tax	16A-41
97.07	2-27-97	Mayor's youth advisory commission	2-255 to 2-259
97.08	2-13-97	Sewers and sewage disposal charges for use	27-151, 27-196, 27-213

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97.09	2-13-97	Notice of sale of abandoned bicycles	7-44
97.10	2-13-97	Park rules; park and building use permits	23-43, 23-44, 23-45, 23-47, 23-56
97.12	2-27-97	Rental housing code	22-100 et seq.
97.14	11-20-97	Number assignment and placement on buildings; conformance with applicable codes	25-41, 25-132
97.20	4-10-97	Change building safety and community development to development services	Various code sections
97.21	5-8-97	Vicious animals	6-21, 6-26
97.22	4-24-97	License tax on music or amusement devices	5-1
97.24	5-8-97	Sidewalk cafe, pushcart or kiosk sidewalk vending	24-16, 24-26, 24-27, 24-37, 24-38, 24-39, 24-40
97.25	8-21-97	Urban camping	23-90, 23-91, 23-92
97.30	5-1-97	Special election for initiative and referendum questions	13-9
97.31	5-29-97	Cable TV franchise amendments	10-1, 10-7, 10-25, 10-27, 10-37, 10-56, 10-58, 10-59, 10-60, 10-61, 10-64
97.40	9-11-97	Adopting 1994 Uniform Building Code with amendments	8-300 et seq.
97.41	9-11-97	Appendix Chapter 10, Building Security	8-300(1023) et seq.
97.42	8-21-97	Aggressive solicitations	24-115, 24-116, 24-117
97.43	8-21-97	Parking meters; pay and display stations	19-142, 19-143
97.45	8-7-97	Repealed Ord. No. 97.12 Rental housing code	22-100 et seq.
97.48	12-18-97	Swimming pool requirements; commercial vehicles in residential districts	22-60
97.52	10-9-97	Design review; notice of appeal	11-7, 11-8
97.55	12-11-97	Procurement code	26A-1 et seq.
97.56	12-11-97	Trees and landscaping in public rights-of-way and parks	29-39, 29-40, 29-44, 29-45, 29-47

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97.66	12-11-97	Graffiti vandalism	22-100 et seq.
97.67	12-11-97	Fireplace restrictions	13A-1 et seq.
97.69	12-11-97	Telecommunications service providers	31A-1 et seq.
98.01	01-08-98	Rental housing code	22-110 et seq.
98.04	01-22-98	Massage therapists and establishments	17-1, 17-4, 17-5, 17-6, 17-8, 17-21, 17-22, 17-23, 17-24, 17-24.1, 17-25, 17-26, 17-28, 17-29, 17-30, 17-31, 17-32
98.05	02-12-98	Alternates for design review board	11-4
98.11	02-26-98	Water plan required for new non-residential users	33-142
98.12	03-12-98	Exempting remediation contracting from privilege and use tax	16-100, 16-465, 16-660
98.13	03-12-98	Exempting instruction in dance, martial arts and gymnastics from privilege tax on amusements	16-410
98.14	03-12-98	Amending definition of primary health care facility	16-100
98.17	03-26-98	Reduced speed limits on roadways adjacent to public schools	19-63
98.22	05-14-98	Regulation of motorized play vehicles and motorized skateboards	19-1, 19-20, 19-21, 19-22, 19-23, 19-24, 19-25, 19-26, 19-27
98.23	04-30-98	Amendments to plumbing code; urinals and decorative fountains	8-700 (Secs. 1804 and 1809)
98.34	08-13-98	Storm water pollution control	12-115 et seq.
98.37	06-25-98	Adopting 1998 amendments to tax code	16-100 et seq.
98.57	12-17-98	Sitting/lying down on sidewalks in central commercial district	29-70 et seq.
98.59	12-17-98	Street entertainers in the central commercial business district	24-16, 24-29, 24-30

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99.07	04-15-99	Amendments to building code	8-300 (107), (506)
99.08	07-22-99	Adopting 1996 National Electric Code with amendments	8-404, 8-426, 8-451, 8-452, 8-453
99.13	07-15-99	Citizen's panel for review of police complaints and use of force	2-285 to 2-288
99.14	06-10-99	Telecommunications service providers	31A-1, 31A-2, 31A-10, 31A-11, 31A-12, 31A-20, 31A-21, 31A-41
99.15	07-22-99	Regulation of tobacco products; storage and display	22-51, 22-52, 22-53
99.17	07-15-99	Public safety enhancement charge	26-60
99.18	07-22-99	Alarm permits; false alarms	22-76, 22-77.1, 22-81
99.21	08-12-99	Subdivisions	30-1 et seq.
99.26	08-19-99	Adopting 1997 Uniform Fire Code	14-16, 14-41
99.35	09-30-99	Nuisances and property enhancement	21-1 et seq.; 22-60 et seq.
99.39	12-09-99	Employer, employee relations meeting and conferring	2-400 et seq.
99.40	12-16-99	Adopting the 1999 amendments to tax code	16-100 et seq.
99.44	12-16-99	Nuisances and property enhancement	21-4, 22-60
2000.01	01-20-00	Amendments to noise chapter	20-2, 20-3, 20-4, 20-6, 20-7, 20-8, 20-11, 20-12, 20-13, 20-14, 20-15, 20-16, 20-17, 20-18, 20-19
2000.09	02-10-00	Restricted parking areas reserved for physically disabled	19-93
2000.10	03-16-00	False alarms and service fees	22-77.1
2000.13	03-30-00	Amendments to noise and nuisances and property enhancement chapters	20-12, 20-13, 20-14, 20-16, 21-6, 21-7, 21-8, 21-10
2000.14	06-08-00	Undergrounding of utility lines	25-120, 25-122
2000.21	06-08-00	Double Butte Cemetery advisory committee	2-295 to 2-300
2000.22	05-31-00	Sewer development fees	27-213, 27-214
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2000.25	06-15-00	Amendments to historic preservation	14A-2, 14A-3, 14A-4, 14A-5, 14A-6, 14A-7, 14A-8
2000.37	09-14-00	Increase privilege and use tax rate to 1.8% (Proposition 400)	16-405, 16-410, 16-415, 16-416, 16-417, 16-425, 16-427, 16-430, 16-435, 16-444, 16-445, 16-450, 16-455, 16-460, 16-470, 16-475, 16-480, 16-610
2000.38	01-25-01	Mayor's youth advisory commission	2-256
2000.41	09-21-00	Establishment of chief of staff, chief financial officer, city manager and city departments	2-17, 2-18, 2-19, 2-131, 2-132, 2-133, 2-134, 2-135, 2-136
2000.43	10-12-00	Amendments to meeting and conferring	2-400, 2-401, 2-402, 2-403, 2-425, 2-426, 2-427, 2-428
2000.47	11-02-00	Neighborhood advisory commission	2-305 to 2-310
2000.48	11-02-00	Temporary special events	5-2
2000.52	12-14-00	Establishment of water utilities department	2-131, 2-136, 2-137
2001.09	03-29-01	Amendments to building code	8-300 (Sec. 107)
2001.16	07-26-01	Alternative fuel exemptions; multi-jurisdictional auditing; centralized hearing administration	16-450, 16-465, 16-510, 16-553, 16-570, 16-660
2001.17	07-26-01	Establishment of assistant city managers and city departments; management services department to be known as financial services department; and department directors to be known as department managers	2-17, 2-18, 2-19, 2-131, 2-134, 2-135, 2-136, 2-137, 2-138, 2-139, 2-140; various code sections
2001.18	07-26-01	Adult-oriented businesses	16A-117, 16A-120, 16A-127, 16A-129
2001.21	10-18-01	Amendments to city park rules; changing certain sanctions from criminal to civil	23-36, 23-37, 23-37.1, 23-45, 23-48, 23-58, 23-80; 23-81 to 23-87
2001.24	07-26-01	Employer, employee relations meeting and conferring	2-426
2001.25	09-13-01	Public safety radio amplification system	9-21 et seq.
2001.29	09-20-01	Speed regulations	19-63
2001.32	10-18-01	Massage therapists and establishments	17-1, 17-8, 17-23, 17-26, 17-29
2002.04	01-17-02	Dealers in used goods	16A-2, 16A-9, 16A-27

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2002.06	5-30-02	Nuisances; rental housing code; administration and enforcement	21-1 et seq; 22-110 et seq.
2002.08	02-28-02	Disposal of property in police possession	26-53.1
2002.13	03-28-02	Amendments to assistant city manager and human resources department; establishment of community relations and economic development departments	2-17, 2-18, 2-131, 2-132, 2-135, 2-136
2002.17	5-2-02	Speed regulations	19-63
2002.18	5-2-02	Speed regulations	19-63
Prop. 200	5-21-02	Amendments to smoking pollution control	22-41, 22-43, 22-44, 22-45, 22-47, 22-48, 22-49, 22-50, 22-52, 22-53
2002.22	8-1-02	Parks and recreation board; urban camping; establishment of preserves	23-20, 23-90, 23-91, 23-100 et seq.
2002.23	8-1-02	Alcoholic beverages liquor license	4-3
2002.24	8-1-02	Fortunetellers, etc. license	5-3
2002.25	8-1-02	Amendments to business regulations relating to fingerprinting	16A-9, 16A-62, 16A-78, 16A-117, 16A-143
2002.26	8-1-02	Massage therapists and establishments	17-1, 17-6, 17-8, 17-21, 17-22, 17-23, 17-24, 17-24.1, 17-26, 17-29
2002.29	8-1-02	Sidewalk vending and sidewalk cafe locations and regulations	24-16, 24-26
2002.35	8-8-02	Amendments to smoking pollution control; general provisions; drainage and flood control; noise; nuisances and property enhancement; parks and recreation	1-7, 1-8, 1-9, 1-10, 1-11, 12-149, 20-12, 20-13, 20-14, 20-16, 21-6, 21-7, 21-8, 21-10, 22-43, 22-46, 22-47, 22-53, 22-54, 23-82, 23-83, 23-85
2002.36	10-3-02	Redevelopment review commission	2-315 to 2-319
2002.44	10-24-02	Judicial advisory board	2-31
2002.46	11-21-02	Tax upon transient lodging	16-447
2002.47	12-19-02	Application procedures for peddlers, solicitors and itinerant merchants	24-38, 24-73, 24-107
2002.56	1-16-03	Human resources department; criminal history information	2-3, 2-138
2003.07	3-27-03	Rio Salado citizen advisory commission	2-275, 2-280
2003.14	6-19-03	Speed regulations	19-63
2003.24	8-14-03	Amendment to building code	8-300 (Sec. 601 and 904)

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2003.29	10-30-03	Large parties, gatherings or events	5-31, 5-32, 5-33, 5-34
2003.37	1-15-04	Design review criteria	11-6
2004.03	2-19-04	Solid waste	28-1, et seq.
2004.09	4-1-04	Prohibited activities in parks; rules of use, criminal and civil penalties	23-40, 23-110, 23-111, 23-48
2004.13	4-29-04	Storm water retention and storm water pollution control	12-56, 12-57, 12-60, 12-73, 12-115, 12-117, 12-118, 12-125, 12-127, 12-128, 12-135, 12-147, 12-149, 12-150, 12-152
2004.14	4-29-04	Hauling waste fill or excavation material	19-50
2004.15	4-29-04	Cross-connection control	33-101, 33-102, 33-103, 33-104, 33-105, 33-106, 33-107, 33-109, 33-110
2004.16	4-29-04	Mobile merchants, kiosks and sidewalk cafes	24-16, et seq.
2004.25	6-10-04	Amendment to building code	8-300 (Sec. 503)
2004.38	9-30-04	Sewers and sewage disposal; pretreatment	27-1, 27-3, 27-4, 27-10, 27-12, 27-15, 27-22
2004.42	1-20-05	Amendments to City Code to be consistent with Zoning and Development Code	Various code sections
2004.47	5-5-05	Speed regulations	19-63
2004.49	11-18-04	Massage establishments	17-1, et seq.
2004.52	12-9-04	Transportation commission	7-61, 7-62, 7-63, 7-64, 7-65, 2-246, 2-250
2005.18	4-7-05	Establishment of community development department	2-131, 2-132; various code sections in Chapters 2, 14A and 21
2005.32	6-2-05	After-hours establishments; hours; application and license procedures	16A-75, 16A-78, 16A-81, 16A-82, 16A-87, 16A-88
2005.67	9-29-05	Floodplain management	12-18, 12-20, 12-27, 12-28, 12-29, 12-33
2005.69	9-29-05	Procurement	26A-1, 26A-2, 26A-3, 26A-4, 26A-5, 26A-8, 26A-9, 26A-11, 26A-21, 26A-22, 26A-50, 26A-51, 26A-52, 26A-53

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2005.71	10-20-05	Tardeada advisory board	2-325 to 2-330
2005.75	10-20-05	Activities in public right-of-ways	29-18
2005.89	12-1-05	Adopting Tempe Administrative Code, International Building Code, International Residential Code, International Existing Building Code, International Mechanical Code, State Plumbing Code, International Fuel Gas Code (2003 Editions), and National Electrical Code, 1996 Edition	Chapter 8
2005.95	12-1-05	Breastfeeding	22-15
2006.01	01-05-06	Creation of development review commission, Zoning and Development Code	Various code sections
2006.02	2-16-06	Adopting International Fire Code 2003 Edition	14-16, 14-41
2006.14	2-16-06	Sale of products containing pseudoephedrine	22-16
2006.25	04-06-06	Establishment of parks and recreation department	2-131, 2-142; various code sections in Chapters 2, 6, 23, 24 and 30
2006.44	06-15-06	Rental, leasing, and licensing for use of real property	16-445
2006.45	06-01-06	Establishment of prosecution assessment	2-32
2006.46	06-01-06	Establishment of warrant fees	2-33
2006.48	09-07-06	Permits for overweight and overheight vehicles	19-45
2006.53	07-20-06	Nuisances - enumerated violations	21-3
2006.76	09-21-06	Employee groups, meeting and conferring	2-400, 2-401
2006.77	01-04-07	Towing from private property	32-2, 32-3, 32-4, 32-5, 32-6, 32-7, 32-8, 32-9
2007.07	02-01-07	Adult-oriented businesses; sexual encounter center	16A-113 to 16A-133; 22-17
2007.13	03-01-07	Appointment and qualifications of commissioners	2-34
2007.20	04-19-07	Amendments to license, privilege and excise taxes	16-100, 16-260, 16-266, 16-305, 16-310, 16-410, 16-415, 16-416, 16-417, 16-444, 16-445, 16-447, 16-450, 16-455, 16-465, 16-470, 16-475, 16-500, 16-540, 16-542, 16-560, 16-565, 16-597, 16-660
2007.21	05-17-07	Amendments to parks and recreation rules	23-35, 23-36, 23-37, 23-40, 23-45, 23-46, 23-57, 23-59, 23-74, 23-75, 23-76, 23-77, 23-79

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2007.28	05-03-07	Position of motor-driven cycles	19-141
2007.30	11-08-07	Speed regulations	19-63
2007.32	06-28-07	Amendments to Tempe Administrative Code	8-103, 8-104, 8-105, 8-106, 8-107, 8-111, 8-112
2007.39	06-28-07	Cable TV franchise amendments	10-1, 10-12, 10-14, 10-20, 10-25, 10-29 10-35, 10-36, 10-37, 10-45, 10-63, 10-72, 10-73, 10-74, 10-79, 10-83
2007.41	06-28-07	Parking meter rates	19-144
2007.54	08-16-07	Civil defense and emergency services	9-22, 9-24, 9-28, 9-29, 9-30, 9-31, 9-32, 9-33
2007.59	10-07-07	Massage establishments	17-1, et seq.; 16A-160, et seq.
2007.62	09-06-07	Park hours of operation	23-36
2007.70	10-25-07	Amendments to International Fire Code	14-41
2007.72	10-25-07	Procurement	26A-1, 26A-2, 26A-3, 26A-4, 26A-5, 26A-6, 26A-8, 26A-9, 26A-11, 26A-12, 26A-13, 16A-14, 26A-15, 26A-16, 26A-17, 26A-18, 26A-19, 26A-20, 26A-21, 26A-22, 26A-23, 26A-24
2007.80	12-13-07	Nuisances and property enhancement	21-1, 21-3, 21-4, 21-25, 21-26, 21-35, 21-37, 21-42, 21-43, 21-53
2007.81	12-13-07	Amendment to Tempe Administrative Code	8-111
2007.82	12-13-07	Sidewalk cafes	24-16, 24-17, 24-46, 24-47, 24-48
2007.83	01-10-08	Sewers and sewer disposal	27-3, 27-4, 27-10, 27-15, 27-22, 27-23, 27-24, 27-32, 27-47, 27-61, 27-82, 27-93, 27-151, 27-197
2008.01	01-24-08	Various code sections relating to boards and commissions	2-181, et seq; 23-16, et seq; 15-16, et seq.
2008.06	02-21-08	City manager	2-19
2008.09	02-21-08	Mobile homes and trailer coaches	18-1, 18-2, 18-3, 18-7, 18-12
2008.10	02-21-08	Sponsorship review committee	2-205, 2-208, 2-209, 2-210, 2-211, 2-212
2008.13	04-03-08	Undergrounding of overhead utility lines	25-120, 25-122
2008.14	04-03-08	Environmental programs and standards; outdoor fires; dust control	13A-7, 13A-25, et seq.
2008.21	06-05-08	Enumerated violations; barking dogs	21-3

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2008.26	08-14-08	License, privilege and excise taxes	16-100, 16-415, 16-416, 16-417, 16-465
2008.36	08-14-08	Transit; transit enforcement aides	22-171, et seq.; 26-1; 26-5
2008.45	09-18-08	Parking without paying/designated meter	19-142
2008.47	09-18-08	Prosecution assessment	2-32
2008.52	10-02-08	License, privilege and excise taxes	16-300, 16-310, 16-315
2008.56	11-06-08	Streets and sidewalks; permits/licenses	29-18, 29-19, 29-23
2008.62	11-06-08	Excessive false alarms	22-77.1
2008.63	11-06-08	Procurement	26A-1, 26A-2, 26A-4, 26A-5, 26A-6, 26A-8, 26A-9, 26A-11, 26A-12, 26A-13.1, 26A-14, 26A-15, 26A-16, 26A-17, 26A-21, 26A-52
2008.68	11-20-08	Citizens' panel for review of police complaints and use of force	2-181, 2-285, 2-287, 2-288
2008.72	12-11-08	Tempe Building Safety Administrative Code; adopting International Building Code, International Residential Code, International Existing Building Code, International Mechanical Code, International Plumbing Code, International Fuel Gas Code, International Energy Conservation Code; National Electrical Code	Chapter 8
2009.02	01-22-09	Housing trust fund advisory board	2-355, et seq.
2009.04	03-05-09	Adopting International Fire Code, 2006 Edition	14-16, 14-41
2009.10	03-05-09	Solid waste	28-1, 28-2, 28-11, 28-12
2009.11	05-28-09	Towing from private property	32-1, 32-2, 32-4, 32-5, 32-6, 32-9
2009.20	05-07-09	Traffic barricade program	29-4, 19-171 et seq.
2009.31	09-10-09	Parking areas for physically disabled; wheelchair curb access ramps	19-93, 19-93.1, 19-94, 19-122
2009.35	09-10-09	Residential fire sprinkler system taps	27-213, 33-93
2009.36	09-10-09	Housing trust fund advisory board	2-355
2009.37	10-22-10	Citizens' panel for review of police complaints and use of force	2-288
2009.38	10-22-09	Poultry; assessments on property for nuisance abatement	6-3, 21-42, 21-43, 21-53

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2010.02	02-04-10	Consolidation of community services and parks and recreation departments, community development and development services departments, financial services and information technology departments, and public works and water utilities departments; community relations, diversity and internal audit departments to be offices; Tardeada advisory board; department managers to be known as department directors	2-18, 2-131, 2-132, 2-133, 2-134, 2-135, 2-136, 2-137, 2-140, 2-141, 2-142, 2-144, 2-145, 2-328, 2-330; various code sections
2010.03	03-04-10	Consolidation of golf advisory committee and parks and recreation board; Rio Salado citizen advisory commission dissolution	2-235, 2-239, 2-240, 2-335, 2-336, 2-337, 2-275, 2-279, 2-280
2010.04	03-25-10	Drainage/discharge of swimming pools	27-10, 28-1, 29-20
2010.09	05-06-10	Exclusion of fees and taxes from gross income	16-260, 16-415, 16-416, 16-417, 16-450, 16-570
2010.10	07-01-10	Transient lodging	16-477
2010.15	06-24-10	Automatic sprinkler systems	14-41
2010.20	06-24-10	Increase privilege and use tax rate to 2% (Proposition 401)	16-410, 16-425, 16-427, 16-430, 16-435, 16-444, 16-445, 16-450, 16-455, 16-460 16-470, 16-475, 16-480, 16-610
2010.22	06-24-10	Public safety enhancement charge	26-60
2010.27	07-01-10	Dust control enforcement	13A-51, 13A-52, 13A-53, 13A-54, 13A-55 13A-56, 19-49, 19-91, 26A-25
2010.33	09-16-10	Advertising (Proposition 401)	16-405
2010.34	09-16-10	Municipally approve private contractors	26-3, 19-5
2010.36	11-04-10	Aviation commission	2-215, 2-220
2010.38	10-21-10	Fireworks	14-50, 14-51, 14-52, 14-53, 14-54, 14-55 14-56
2010.46	12-09-10	Disposition of unclaimed and forfeited firearms	26-51, 26-53.1, 26-53.2
2010.47	12-09-10	Collection of taxes when there is succession in and/or cessation of business	16-595
2011.01	01-27-11	Medical marijuana dispensary or cultivation facility	26-70
2011.04	01-27-11	Stand up paddle boarding	23-39, 23-40, 23-74, 23-76, 23-77
2011.14	06-02-11	Spirituous liquor in parks	23-45

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2011.30	09-08-11	Medical marijuana (license, privilege and excise taxes)	16-100
2011.31	09-08-11	Construction contracting; rental, leasing and licensing for use of real property; commercial lease	16-415, 16-416, 16-417, 14-445, 16-660
2011.33	09-22-11	Tempe Building Safety Administrative Code; adopting International Building Code (2009), International Residential Code (2009), International Existing Building Code (2009), International Mechanical Code (2009), International Plumbing Code (2009), International Fuel Gas Code (2009), and International Energy Conservation Code (2009)	Chapter 8
2011.46	10-20-11	Parking in electrical vehicle charging spaces	19-101
2011.56	11-03-11	Nuisance parties and unlawful gatherings	5-30, 5-31, 5-32, 5-33
2012.03	01-19-12	Restricted parking areas for physically disabled; blocking accessible route of travel; parking space; accessible curb ramps	5-2, 19-5, 19-93, 19-93.1
2012.06	01-19-12	Employee groups	2-401(a)
2012.14	03-22-13	Requirements for placement of overhead utility lines underground; waiver for alternate plan	25-125
2012.19	04-12-12	Sewers – additional pretreatment measures	27-22
2012.35	08-09-12	Board and Commissions' powers and duties; subcommittees	2-181
2012.39	09-06-12	Cross-connection control; enforcement and enforcement policies; penalties non-exclusive	33-111
2012.40	09-06-12	Storm water pollution control	12-149, 12-153
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